United States Court of Appeals for the Second Circuit



APPENDIX

In The

United States Court of Appeals

For The Second Circuit

DAILY MIRROR, INC.,

Plaintiff-Appellant,



DANIEL FUSARO, CLES RK NEWS, INC., HARRY (HENRY) GARFINKLE, ECONDNOTES UNION NEWS CO., INC., AMERICAN NEWS CO., INC., and ANCORP, INC.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX

Volume I, pp. JA1 - JA245

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NOV1 0 1975

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TOWNLEY, UPDIKE, CARTER & ROGERS Attorneys for Defendant-Appellee, New York News, Inc. 220 East 42nd Street New York, New York 10017

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(8846)

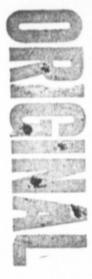
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CIVIL DOCKET UNITED STATES DISTRICT COURT

JUDGE PIERCE by Pltff. 3-16-71

71 CW. 1211

TITLE OF C.	ASS				ATTORNEYS	
AGAINST. NEW YORK WEWS, INC. HARRY GARFINKEL, UNIDOXX XXXX UNION NEWS COMPANY, INC. TAMERIC N NEWS COMPANY, INC.			VIII	aintiff: CENT J. DEBO O Avenue of t	he America	13
and Ancorp, The.	notify	Judge	Carte	r		and the state of t
			230 Par New Yo. News I	efendant: FREDER WA ROck Ave. ck 10017 (al nc.)	1 defts ex	pisii
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Basis of Action:	Docket fee			/		
HERMAN ANTI-TRUST ACT.	Witness fees					

CIVIL DOCKET DOCKET ENTRIES UNITED STATES DISTRICT COURT Jury demand date: STATE TILINGE · by Pltff. 3-16-71 TITLE OF CASE For plaintiff: TATHE THERET INC. THE Avenue of the Coords ALIISI. CONTROLS, INC.
CORY CARFITTEE, Underlying
CONTROLS COLPANY, INC.
LEGICAL NEWS COMPANY, INC. substituted Robert W. Farrell-- 67 Park-Ave-NYC-10016-787-7001-AD AMOGRA, T.K. sucot. on 11-13-73 Darriott 1. Kreister (for Harry Carfinkel only) ... Eugene Frederick Poth, 230 Park Ave., XXX For Jeferdaht: defendents - except 7.1. EUGENE FREDERICK ROTH 230 Park Ave. New York 10017 (all defts except New York News Inc.) Townley, Updike, Carter and Robers
220 E.42 St, NYC 10017 MU-2-4567

2-27-7b: Saxe, Bacon, bolan & Park Ave., NYC 10021 (Union New 4-11-74: for Aucorp. Corp.
Eugene F. Roth, 230 Park Ave., NYC.) NAME OR DATE COSTS STATISTICAL RECORD RECEIPT NO. 5 mailed Clerk Marshal 6 mailed Docket fee sis of Action: U,COO,OCO Witness fees Depositions tion arose at:

MIRROR, INC. VS. NEW YORK NEWS, INC. ET-AL ZI CAULT Jadeamar M Filed Compliant. Ixssued Summons. War 10.71 7-7-71 Filed Interrogatories. pr. 12-71 Filed ANSWER of Garfinkel, Union News Co. Inc. American News Co. Inc. and Ancorp. Inc. to the complaint. Filed summons with marshal's ret. Se ved New York News Inc. by William J. Costantino on 3-18-71 Served Harry Garrinkel by personally on 3-22-71 Served Union News Co. Inc. by Joseph R. Kiernan on 3-22-71 Served American News Co. Inc. by Joseph P. Kiernan on 3-22-71 Filed stip. & order adjourning deposition of Robert W. Farrell to 5-19-71. -Motley, J. Filed stip and order that pitff, may have to the 25th day of June to respond to the deft's N.Y. News Inc. interrogs. Tenney J. ay 21-71 Filed stip and order that depos on of Mobert W. Farrell and of the Paily Mirror Inc. is adjourned until 7-15-71, McGohey J. [41.8-71] Filed stip and order that the time for pittf. Daily Mirror, Inc. may have to 8-27-71 to respond to deft's New York News, Inc. interrogs. Sc Ordered; Bonsal, J. liled stigulation and order adjourning deposition of Robert W. Farrell as indicated, Cooper, J.

71 0031

DATE	PROCEEDINGS
Var.15-71	Filed Complaint. Dissued Summons.
pr.7-71 I	iled Interrogatories.
Apr.12-71	Filed ANSWER of Carfinkel, Union News Co. Inc. American News Co. Inc. and
A 30 77	Ancorp. Inc. to the complaint.
Apr. 12-71	Filed surmons with margnal's ret. Served New York News Inc. by William J. Costantino on 3-18-71
	Served Harry Garfinkel by personally on 3-22-71
-	Served Union Mays Co. Inc. by Joseph R. Mierran on 3-22-71
	Served American Mayo Co. Inc. by Joseph F. Kiernan on 3-22-71
Apr 27-7	Served Ancorp. Inc. by Joseph P. Kiernen on 3-22-71 Filed stip. & order adjourning deposition of Reert W. Farrell to
61	5-19-71Motley, J.
by 12-71	Filed stip and order that pltff, ray have to the 25th day of June to respect to
1 03 03	the deft's N.Y. News Inc. interrogs. Tenney J.
Fay 21-71	Filed spin and order that deposition of Abbert W. Farrell and of the Paily Mirror
Jul.8-71	Filed stip and order that the time for patif. Daily Mirror, Inc.
4	may have to 8-2/-/1 to respond to deft's New York News, Inc.
11 7 77	interrogs. So Ordered; Bonsal, J.
701 15-11	Filed stigulation and order adjourning deposition of Mobert W. Farrell as indicated. Cooper, J.
Jul3-73	Filed CONSENT TO CHAUGE ATTY- Robert W. Forrell is substituted
	as atty for pitif. CARTER J.
7-20-73	Filed affect, and notice of notion by deft. New York Meyer Inc. for an order
1	dismissing this action as against the News, etc ret. 8-3-73 et
7-20-73	Filed recognition of law by doft New York News Two in support of
	dishess this action as against the N.Y. News. Inc.
8-2-73	Filed affet, of Eugene Frederick Roth(atty for all defts.)
1/4-	on the motion of deft. N.Y. News , Inc. to dismiss section.,
8-15-73	Filed reply affdt. of Robert Farrell.
8-15-73	Filed reply affdt. of Robert W. Farrell.in oppos. to dismiss.
8-15-73	Filed reply affdt. of Robert Farrell in reply to the re ply
*	affdt. Dated Aug. 7,1973 by Towley, Undike, Carter and Rogers.in bhealf of deft.NY News.
8-15-73	Filed reply affdt. of John Canoni.
8-15-73	Filed memo end. on motion dated July 20.1973 for an orderby desti-
***	NY News to dismiss action that rtf. has failed to answer
	interrogMotion is denied without prej. to deft. to
1	renew motion if pltf.does not proceed promptly and expeditiously in the preparation of this case for trial
	Carter, J. m/n
3-15-73	Filed stp. and order that the exam before trial of deft. NY News
	scheduled for Aug. 20,1973 is adi. until 20 days after
	entry of an order on the motion of said deft, to dismiss
3/3/73	Filed Deft. Complaint Carter, J
ost.12-7	I A M DE DESCRIPTION DISTRICT COME COME PROPERTY DESCRIPTION DE MAIO MAIO MAIO
	Inc. is adi, from Sept. 4, 1973 to Sept. 10,1973. So ordered.
JV-13-73	filed consent order substituting Attorney for defendants Uniter, J.
*****	(for henry warfiaked only)
17.75	FT. ANTIN CONFERNIE WILD BY LANGE . 1.
131/75	pro-trial before Gullerial
Ed St. No.	

• /2	JAZ-1
	PROCEEDINGS JUDGE FOR AUT -
DATE	PROCHEDINGS JUJIES COSAN
eb. 11-74	Hailed notice of reassignment.
ab. 4-74	Filed deft's (N.Y.News) second set of interrogs.
eb. 28-7	A Mailed Motice of Reassignment to Judgo Carter.
41-27-7	Tilled consent and a colored than the analy dan date, then her to a Correr, it
-28-74	FRE-TRIAL CONTROLLES HEAD BY CAREE)
-:1-1-	FRE-IRIAL COMPRESENCE HELD BY
7- 9-74	Filed plti's airdyr, and notice of motion for an order requiring
	the taking of depositions of William McCullough, Pres. of
	Am. News Co., etal ret. 4-17-74
9-72	/ Filed affdyt, of service reabove motion.
0r-1.0-7	Filed consent order substituting Atty. of record for deft.
	A to a c sees P covers C a see c a see
pr-16-7	4 Filed deft. N.Y. News affdyt. of Mark D. Geraghty in opposition
	to pltf's motion ret, 4-17-74
pr-16-7	74 Filed deft. N.Y. News memorandum of law in opposition to pltf's
-	
ay-10-7	Filed deft. N.Y. News answers to interrog. served 4-3-74.
-v-10-7	Filed deft. N.Y. News Inc.'s objections to certain interrog.
-	or pitt. served on 4-3-74
un- 7-7	4 Filed ENDORSEMENT re pltf's motion for the taking of depositions
	and defendant's opposition to the continuation of discovery.
	For reasons indicated, the motion is denied without prejudice
	to renew it after application has been made and acted upon by the bankguptcy reserve. The discovery schedule previously
	established will be appropriately adjusted. So ordered
	established will be appropriately adjusted. So ordered.
7-7-7	Carter, J. m/n 74 Filed pltf's reply arrdyt. of Robert W. Farrell -
1::22 7 7 7	74 Filed debtor's memorandum of law in support of exclusive
3011- 1-1	jurisdiction by bankruptcy court.
Tran 17:-	74 Filed notice of entry of memo & order filed on 6-7-74.
335.17-7	A TEST OF THE PARTY OF THE PART
	Farrel and in opposition to Ilitia a motion
	Wiled Phails . Reply Affiliavit in terrorse by Deit. M.Y. Nous Inc.
11017-10-	If Tiled wome endomed an eltr's mation to require the thicken of
0 0 2 2	depositions of Fin recultorgin region decied except as indicated.
	Carter, J. m/n
1/277-10	-74 Filed notice of entry of above endersament.
03-07-	Siled pltf's affdyt, and notice of motion to lift stay ret. 3-21-75
03-07-	The section of Mark D. Getachly in conceition to
13-13-73	pltf's notion.
Var. 19-7	Contract of the contract of th
2.7-1	motion seeking to renew a prior motion for further discovery.
ar. 27-7	
	FRANKEL, J. (m/n)
br. 26-7	Pro-trial conference held by FRANKEL. J.
15: 5-75	Filed deft. New York News Inc. affdyts and notice of notion for an order
	pursuant to Rule 50 (e) FEOP granting to said deit. summary judgment
	dismissing the complaint. Ret. 5-27-75.
Yay 5-1	5. Filed memorandum of law of deft. New York News, Inc. in support of its
	motion for surmary Judgment.
July J	3+75 Fuled deft. Henry Garfinkle's Affidavit in opposition to the
	plaintiff's motion, returnable before this court on 07-03-75.
-	4
	- Del over -
PROPERTY AND A SECOND	19. AND 1 CONTROL OF THE PARTY

DATE	FROCEEDINGS
Hoy 7-75	Filed remarander The court is being favored in this case with a borroom of
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	should all desire to avoid the court evareages the head that to manage
May 12-75	
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·	to extrated better trible as esertial to the premared on each
,	who signed and executed the bill of sale from the H.V. History (
	the N.Y. News, Inc. dated ID-15-63 and etce Nete 5-27-122
12727-75	Filed Affidavit of the fit
	Filed Affidavit of de ft. (New York News Dic.)in opposition to pltife notion of
) m/ 1/0
May 27-75	Filed Supplemental Affidavit of deft (New York News Inc.) in support of deft
	inc. notion for a wwary judgment.
-	John Date of Contract of Contr
12028-75	Filed defts Affidavit in conquision A. I.
	Filed defts Affidavit in opposition to the various motions of plt and to defend to def
June 3-7	Filed place's duplicate and f
	Filed pltff's duplicate copy of application for withdrawal of providing discrete
	judge, pltif claiming to have filed original on 5-29-75 with contier.
Juna 9-75	Filed Affidavit of Thomas A. Polan on behalf of himself and the senior men
	of the firment Roy Me Cohn Es qe
June 30=7	Filed deft. Ancorp. Inc. Alfort, and rotice of mation for an order
	pursuant to have be for surrary judgment disminating action in a production
June 10-7	Filed deft. New York News Inc. affect. of Mark D. Geraghty in commediate plan plan
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	LEGAL LY DIGITALEN TO SECTION III and LLC on an annual land
0018 3-15	Filed Perforancem - Chinion # 42552 - Pocision - for the macrons crossed
	Swindly Judgment 13 granted, he Clerk of the County
	dismissing the case with prejudice and with costs to doits. It is so created FRANKEL, J. (m/n)
ייוו פתוים	
	Filed Judgment- ordered that defts. have judgment against plaff, dismissing the against plaff, dismissing the against plaff.
Juna 19-75	with prejudice, and with costs to be taxed, to the defts. Clark (m/n)
	Filed pltff's affdyt. of Robert W. Farrell of pallication pursuant to Sec. 100 and
June 21:-75	711 od discovered and Co. 141
	Filed Manorandum- for the reason stated, pltff's application society an enter-by an enter-
June 30-75	Filed pitti 3 affects, and nation of monion so ordered Tablett I. (1/2)
1	Filed pitif's affdyt. and notice of motion for all order 1341441 1. (1/2) Rate 7-3-75.
luna_30-75	Filed Memorandum in support of pltff's motion to vacate.
July 7-75	Filed Managrandum-Oninion # 1.2727
	Filed Memorandum-Opinion # 1/2737 and Order for the reason stated, pltss's maker
July 10-75	
July 31-75	Filed deft. Ancorp. Inc. offdyt. of John F. Long in constitution of appeal from the Order defet 7-3-15 and 1 10 of 1-1-12.
	Ciopica to: Tamley, Updiko, Cartor & Redgers - Farrett G. Kreisberg and Lake,
	& Manley. Ent. 8-1-75

DETATE DISTRICT COURT DOCKET ENTRIES by Pltff. 3-16-71 ATTORNEYS ... TITLE OF CASE For plaintiff: VINCENT DERO PERSOR! INV N.Y.C. N.Y. 10036 substituted THE STATE OF THE S Robert W. Farrell GOLDI - LOCALITATION - LINCALITATION - LINCALI 67 Park Ave NYC 10016 787-7001 suist, on 11-13-73 Parriett O. Kreisberg. 101 E. hoth St. WC (for Harry Carfinkel only)...

Eugene Fredorick Soth, 230 Park Ave. Mc.

For defendant: BUGENE FREDERICK ROTH New York 10017 (all defts execept New York Townley, Updike, Carter and Robers 220 E.42 St, NYC 10017 MU-2-4567 2-27-74: Saxc, Bacon, Holan & Manney, 4-11-74: for Ancorp. Corp. Eugene F. Roth, 230 Park Ave., NYG.10 Marie C. W. NAME OR REC. BTAG RECEIPT NO Clerk Marshal d Action: Docket fee JANTT-TRUST ACT Witness fees Depositions ion arose at:

to Day		-
DATE	PROCEEDINGS **	Die Or
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1220-72	Filed Complaint. Desced Summons.	1
7-71 P	Ilad Interrogatories.	200
22.71	Filed ANSWER of Carfinkel, Union News Co. Inc. American News Co. Inc. and	
100 00	Amorp, Inc. to the complaint.	10 30 37
123.71	Filed summons with marshal's ret. Served New York News Inc. by William J.	196 3
	Costantino, on 3-18-71	- 1
1 1 W	Served Harry Garfinkel by personally on 3-22-71	200
	Served Union News Co. Inc. by Joseph R. Kiernan on 3-22-72	-
455 Ab 80 1	Served American News Co. Inc. by Joseph P. Kiernan on 3-22-71	7.32
35,886,91	Filed stip, & order adjourning deposition of Roert W. Farrell to	1000
AND STATE OF	5-19-71Motley, J.	200
AVII CARSON	Filed stip and order that pltff, may have to the 25th day of June to respond to	1807 10 10
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1000	interrogs. So Ordered; Bonsal, J.	1
PALSE S	Filed stimulation and order adjourning deposition of Robert W. Farrelline	1
September 1	indicated Coper, J.	1
113-73	Filed CONSEST TO CHANGE ATTY- Robert W. Farrell is substituted	70 30 30
100	as atty for pltff. CARTER, J.	1
20473	Filed affdyt, and notice of motion by deft, New York News, Inc. for an order	7.00
14.51	dismissing this action as a minst the News, etc. ret. 8-3-73 at	
BA 29	Filed memorandum of law by deft. New York News Inc. in support of motion to	1
100	dram se this action as against the N.Y. News, Inc.	13
1-24 TS	Wiled affdt, of Eugene Frederick Roth(atty for all defts.)	- circle 3
PALL NOW	for the motion of deft. N.Y. News . Inc. to dismiss action.	a Lagran
在福祉 >	etc	140
(1) · 放在	Filed reply affdt. of Robert Farrell.	71
in the second	Filed reply affdt. of Robert W. Farrell.in oppos. to dismiss!	400
1-25-73	Filed reply affdt. of Robert Farrell in reply to the re ply	10 Tel 15
	Affdt. Dated Aug. 7,1973 by Towley, Updike, Carter and	1
-	Rogers.in bhealf of deft.NY News.	11/2
1 St. 12	Filed memo end. on motion dated July 20,1973 for an orderby deft.	110
A BASE TOPE	We News to dismiss action that ptf. has failed to answer	0.182
COLUMN TO SERVICE	Finterrog - Motion is denied without prej. to deft. to	ALC: N
The second	renew metion if pltf.does not proceed promptly and	160,7308
100	expeditiously in the preparation of this case for trial	586
· 南江773	Carter, J. m/n	Car
B to the	File d stp. and order that the exam before trial of deft: NY News	1
对于1000	acheduled for Aug. 20,1973 is adj. until 20 days after t	heil
10000000000000000000000000000000000000	entry of an order onthe motion of said deft, to dismiss	- 21 -
4/4/79	Affled Defici Notice of Refection.	1 27
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西京,丁夏州	I Filed stap, and order that the exam, before trial of deft. NY News	A
	Inc. is adj. from Sept. 4, 1973 to Sept. 10,1973.Scrordered.	W 4 1 1 1 1
POLITICAL PROPERTY.	Carter J. Gerlend concent order substituting Attorney for defendants Cartor, J.	100
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业为 科、利亚斯	FIGIRTAL CONTESTICE HELD BY LUTIN .4	STATE OF THE PERSON NAMED IN

Daily Mirror vs. N.Y. Neve et al 71 Ciw. 1211 JUDGE FR PROCMEDINGS 1-74 Maile/ notice of reassignment. "He's (N.Y. News) second set of interross. Ma Mag of Reassigment to Judge Carter. PRE-TRUE CONFERENCE HELD BY CARTE AND FOR an order requiring the telding of depositions of William McCullough, Pres. of Am. News Co., etal. - ret. 4-17-74 10-74 Filed consent order substituting Atty. of record for deft. An ors. Corp. -- Carter. J. Mark D. Geraghty in opposition to pltf's motion ret. 4-17-74

74 Filed deft. N.Y. News memorandum of law in opposition to pltf's motion ret. 4-17-74

75 Filed deft. N.Y. News answers to interrog. served 4-3-74,

76 Filed deft. N.Y. News answers to interrog. served 4-3-74,

77 Filed deft. N.Y. News Inc.'s objections to certain interrog.

78 Filed deft. N.Y. News Inc.'s objections to certain interrog. Filed ENDORSEMENT re pltf's motion for the taking of deposition and defendant's opposition to the continuation of discovery. For reasons indicated, the motion is denied without prejudice to renew it after application has been made and acted upon by the bankruptcy referee. The discovery schedule previously established will be appropriately adjusted. So ordered. Carter, J. m/n
Filed pltf's reply abrdvt. of Robert W. Farrell o F led debtor's memorandum of law in support of exclusive jurisdiction by bankruptcy court.

| Filed notice of entry c1 memo & order filed on 6-7-74.
| Ferrel and in opposition to File a motion Filed Plt23 Reply Afficavit in recommse by Daft. N.Y. News Inc. depositions of Um McCullough: Notion denied except as indicated. & Filed notice of entry of above andor sement. Piled oft's affdyt, and notice of motion to lift stay. - ret. 3-21-75'
Piled deft's NY News, Inc.'s affdyt. of Mark D. Geraghty in opposition to pitf's motion. Filed deft. Henry Carfinkle affdyt. of Barrett G. Kreisberg in opposition to motion seeking to menew a prior motion for further discovery.

Filed meno endorsed on motion filed 3-7-75. Notion denied. So ordered. motion seeking to menew a prior motion for further discovery. FRANKEL, J. (m/n)
Fre-trial conference held by FRANKEL, J. Tiled defts New York News Inc. affdyts and notice of motion for an order pursuant to Rule 50 (e) FRCP granting to said deft. summary judgment dimissing the complaint. Ret. 5-27-75. 15 11 1 1led memorandum of law of doft. New York News, Inc. in support of its mociongfor summery indepent. Filed deft. Henry Carfinkle's Affidavit in opposition to the plaintiff's motion returnable before this court on 07-03-75. over -

ATTENDED	THE RESERVE THE PROPERTY OF THE PARTY OF THE			
DATE	- A	PROCEEDINGS		a ai
May 12-75	correspondence should all des this seture wi Filed deft Rec. Piled pitff's a	The court is being favored in the Events of this nature drive all the to avoid ***The court expressed prove necessaryFrankel, J. finkle affdyt. and notice of mot Rule 56 dismissing action with post-20-75. If dyt. and notice of motion for a selection trial, as esemtial to the	the hope that no measurem/n ion for an order and Judge rejudice as against and o	toge we
	who signe	d and executed the bill of sale fews, Inc. dated 10-15-63 and etc.	rom the N.Y. Hirror (Hears	15) to
May 27-75	Filed Affidavit	of de ft. (New York News Inc.)1	n opposition to pltifs ro	tion_dated
47 27-75	Filed Supplement	al Affidavit of doft (New York New for a unwary judgment.	us Inc.) in support of	th May York
28-75	Filed defts Af.	fidavit in opposition to the variously as indicated.	ous motions of pltd. Fard t	0 13-1-05
Jame 3-75	Filed Affidavit	duplicate copy of application for siming to have filed original on to of Thomas A. Bolan on behalf of	5-29-75 with cooller	
June 10-7	pursuant to P said deft. N Filed deft. N	ew York News Inc. affdyt. of Mark pursuan to Title 28 USC 82. 11.6	D. Geraghty in connection	es as againm i plih plate
	Filed deft. de made by plt Filed Memorandum	nry Variable affdvt. of Barrett of fr. pursuan to section 11.1: and 45 Opinion # 42562-Decision for	G. Kreisberg within and to so mended little 20 USU, the reasons stated. The massing stated the massing stated the massing stated.	1131 (317)
utine !1=;	dismiss FRANKEL,	judgment is granted. The Clerk of ing the case with projudice and w. J. (m/n)	ith costs to defts. It is	Jo ordered -
une 19-75	with prejudi	ordered that defts. have judgment ce, and with costs to be taxed, to fidvt. of Robert W. farrell of public U.S.C.	a the defta. Cloric	17/71
June 24-75	Filed pltff'3	recusing h.mself, is denied. So affect. and notice of motion for	amplication sanding and and and TRANKET I. (m)	alor by the
une 30-75 July 7-75	Filed Memorand Filed Memorand	um in support of pltff's motion to m-Opinion # 12737 and Order Cor	the reason stated, pltf	
uly 10-75	Filed deft. An	corp, Inc. affect of John F. Lan notice of appeal from the Order of Tomaley, Updiko, Carter & Redgers	(m/n)	75 notices.
	& ning. En	t. 8-1-75	A Property of	W

PLAINTIFF'S COMPLAINT NOS. 8-11 INCLUSIVE (Filed March 16, 1971) JAS

complaint of DAILY MIRROR INC., March 16th,1971 combination, conspiracy and acts hereinafter complained of were entered into and performed by such officers, agents, representatives and employees with the knowledge and sanction of their respective corporations.

- 8. Commencing in or about January, 1971, and continuing thereafter and continuing to date, Defendants, their agents, servants and/or employees, did knowingly and unlawfully combine, conspire, agree and have a tacit understanding together with each other and with various other individuals and firms to restrain and/or moropolize trade and commerce in the dissemination of news, newspapers and other activities within and/or related to the newspaper industry in and among the several states, and they did in fact restrain and/or monopolize such interstate trade and commerce in violation of Section 1 of the Sherman Act. Said offenses will continue unless the relief hereinafter prayed for is granted.
- 9. The said combination, conspiracy and actions of Defendants were in violation of Sections 1 and 2 of the Sherman Anti-Trust Act, 15 USC Sections 1 and 2.
- 10. It was a part of the said combination and conspiracy and the object and purpose thereof to accomplish the following, among other things:
 - a. To knowingly and unlawfully destroy Plaintiff's publication and to drive Plaintiff out of business;
 - b. To knowingly and unlawfully suppress and eliminate competition between and among newspapers and other publications serving the general public;
 - c. To knowingly and unlawfully create a monopoly in the dissemination of news; and

- d. Agree not to distribute Plaintiff's newspaper to any newsstand or other distribution points serviced by the Defendants or those that they controlled.
- 11. As part of the said combination and conspiracy and to each effectual to object and purpose, Defendants did the following, among other things:
 - a. They refused to carry Plaintiff's newspaper and to distribute them to their newsstands throughout the City of New York and various other parts of the State of New York and the United States.
 - b. They exerted pressure on individuals and firms to whom they regularly distribute newspapers and other periodicals to refrain from carrying Plaintiff's newspaper and to refrain from advertising in Plaintiff's newspapers.
 - c. They sponsored and helped the "Daily News" by causing additional copies of the above described newspaper to be distributed to their distribution places in order to eliminate the distribution and sale of Plaintiff's newspaper thereby diverting from the Plaintiff a very substantial portion of its circulation.
 - d. They attempted to divert and did in fact divert a very substantial portion of the advertising which might have been placed in Plaintiff's newspaper.
- 12. The aforesaid offenses have had, among others, an effect wherein substantial numbers of the public have been denied reasonable access to Plaintiff's newspaper.

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is brought without any foundation in fact to the knowledge of the plaintiff and its officers, and prosecuted maliciously for the sole purpose of coercing the defendants to purchase and sell on its newsstands the publications of the plaintiff at excessive and unreasonable prices which leave no adequate return to the newsstands of Ancorp National Services, Inc., and which are discriminatory and in excess of prices charged to observe by the plaintiff.

WHEREFORE, the defendants request judgment

- (a) dismissing the coupleint herein;
- (b) assessment of all costs, expenses and reasonble counsel fees incurred by the defendants in defense of
 this action.

ated: New York, New York April 9 , 1971

/s/ Eugene Frederick Roth

EUGHAD FREDERICK ROTH, ESQ.,
Attorney for Defendants,
Henry Carfinkle, Unions News
Company, Inc., American News Company, Inc. and Ancorp National
Services, Inc.
230 Park Avenue
New York, New York 10017

1 DATED 7/31/73

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR INC.,

Plaintiff

-against-

NEW Y'RK NEWS INC. ; HARRY (HENRY) GARFINKLE; UNION NEWS COMPANY, INC.; AMERICAN NEWS COMPANY, INC., and ANCORP, INC.

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Served	
Entered	
Filed	T
L/D	
BY	

71 Civ 1211 PLAINTIFFS ANSWERS TO INTERROGATORIES

Defendants

The plaintiff, for its answers to the interrogatories of the defendant NEW YORK NEWS, INC. "pursuant to Rule 33 of the FRCP" alleges as follows: (answers appearing in like numerical order of the Interrogatories)

a- New York

b- New York City

c- April 1967 (ca.)

d-\$ 50,000,\$300,000 ,\$ 150,000.00 in series.

e- Robert W.Farrell 67 Park Avenue NYC

f- Robert W.Farrell Pres.Elda Voss Sec. Vincent Debo Vice President.

David Thomas, President; Philip Budin Sec. Barbara Warner Secretary

g- Employees 1970 over 50 (ca)

h- 300 to 500 (ca)

i- 500 to 750 (ca)

ii-Philip Budin/Nathaniel Kates, Robert W. Farrell, Stephen Genett, David Thomas

i- one annual

11-three.

- Newspaper publishing; n-1970-; No ancillary business.
- 3. Not related to this complaint.
- 4. Not related to this complaint.
- 5.a 1969-1970 Daily and Sunday Mirror 15c and 25c United Press International; offset production

b 100,000;50,000,30,000

c All sales at newstands to Metropolitan News Company, Hudson News Agency (N.J. et al.

d Cape May N.J. Albany, N.Y. Los Angeles, Cal. all of Conn. Massachusetts, Chicago, Boston and others

e \$ 15000.00 per week \$ 10,000.00 \$ 9,000.00

f Mass. New Jersey, Conn. Canada, App. 20,000 copies out of state.

- 7. Plaintiff is unable to answer , requiring being furnished by the defendants with the information by means of an examination before trial of the defendant; the allegations of the complaint in their very nature being dependant upon such information now in the exclusive possession of the defendant.
 - 8. Ditto
 - 9. Ditto
 - 10.Ditto (a) b-Ditto c-Ditto
 - 11. Ditto
 - 12. Ditto
 - 13.aDitto
 b Ditto
 c Ditto
 d (1) -e-f-(i)(ii)(iii) Ditto
 (ii) Ditto
 - 14.aDitto
 bDitto
 cDitto
 dDitto
 eDitto
 fDitto
 gDitto
 hDitto
- From 15. through 28 inclusive Ditto
 - 29. Unkown at this time; and not related to the complaint as such
 - 30. Paul Wygod; Certified Public Accountant
 - 31. Ditto
 - 32. YES

 a- the entire advertising business world

 b- A&R ADvertising 350 Fifth Avenue NYC

 amongst others

 c- 1970 approximately 375,000
 - d- YES
 e- Defendant is not entitled to such informai-tion.
 - f- Defendant is not entitled to information
 - 33. YES a-b-c-d-c-f-g Defendant not entitled to information at this time.

JA8 Televin facel ROBERT W. FARRELL Attorney for the Plaintiff 67 Park Avenue New York City, N.Y. TO : TOWNLEY, UPDIKE, CARTER & ROGERS ATTORNEY FOR THE DEFENDANT NEW YORK NEWS INC., 220 East 42nd Street New York City, N.Y.

- 6. App. 1970 (ca)
- 7. Plaintiff is unable to answer , requiring being furnished by the defendants with the information by means of an examination before trial of the defendant; the allegations of the complaint in their very nature being decembered and upon such information now in the exclusive possession of the defendant.
- 8. Ditte
- 9. Ditto
- 10.Ditto (a) b-Ditto c-Ditto
- 11. Ditto
- 12. Ditto
- 13.aDitto
 b Ditto
 c Ditto
 d (1) -e-f-(i)(ii)(iii) Ditto
 (ii) Ditto
- 14.aDitto .
 bDitto .
 cDitto .
 dDitto .
 eDitto .
 fDitto .
 fDitto .
 hDitto .
- From 15. through 28 inclusive Ditto
 - 29. Unkown at this time; and not related to the complaint as such
 - 30. Paul Wygod; Certified Public Accountant

JAIO

PLAINTIFF'S ANSWERS TO "NEWS" INTERROGATORIES # 2 DATED MARCH 1,1974

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR INC.,

0

Plaintiff

-against-

NEW YORK NEWS, INC., HARRY GARFINKLE, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC..

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L/D	-
CY	165

71 Civ. 1211 (RO)

PLAINTIFF'S ANSWER TO SECOND SET OF INTERROGATORIES

Defendants

of interiogatories of the defendants. NEW YORK NEWS, INC., pursuant to the Rules of the Federal Rules of Civil Procedure alle ges as follows: (answers appearing in like numerical order of the interiogatories)

- 1. The plaintiff has no subsidaries or affiliates.
- 2. The plaintiff maintained no relationship with (a) New York Mirror Inc.(b) Mirror Publications Inc.,(c) National Telepix, Inc., (d) Publishers Distributing Corporation.
 - (a) None
 - (b) None
- (c) The or'y employee of plaintiff under contract is Robert W.Farrell.Said contract was for a period of one year.
- 3. Defendants engaged in the acts charged from the time of defendants knowledge . of plaintiff's announcement to start publication.(A) (b)
 - (c) This knowledge exclusively in the possession of the defendant.
 - 4. Same reply as (c) paragraph 3 .
 - 5. Same enswer as 3c and paragraph 4
 - 6. (a) Answer to this question is solely in the

JAII (b) The answer to this question is entirely within the knowledge of the defendants. (c) The answer to this question is entirely within the knowledge of the defendants; however the clear intent as evident was the climination of the plaintiff as a competitor. 7. Ancorp, Jrc., Henry Gartinkle (Harry), Myron Garfinkle, Mrs. Garfinkle, American News Company Inc , Union News Co. Inc., Manhattan News Company, Gaynor News Company Archie Gordon, Newark News Suppliers, Greater Doston Distributors, Willie Levine, William McCullough, Mr. Lynch, treasurer for the New York News, Inc., Jack Underwood, Harry Kane, "Sol" Giglio, amongst others. 8. Fnown as "dirty tricks" of the trade; best known to the defendants as to the desired details. 9. Answer is YES, but as to details, these are best known to the defendants. (a) Same as to paragraph 9. (b) Jack Underwood, Mr. Lynch, treasurer New York News, Inc., Edward A. Maher, James Rogers amongst others. (c) The destruction of the plaintiff as a competitor, through restraint of distribution, amongst other things. The further answer is within the exclusive knowledge of the defendents. i. Same as (c) ii. Same as (c) (d) Information, best known and in the exclusive possession of the defendants. (e) This documentray information although attested, has been demanded from the defendants but has not as yet been produced or furnished. 110. Yes. (a) Plaintiff contends both oral and in writing; data in the exclusive possession of the defendants. (b) Amongst others, parties or persons named in

paragraph 7.

- (c) Knowledge in the exclusive possession of the
 - (d) Same answer as to (b)
- (e) Examinations of Harry Kane and Jack Underwood et al., indicating such documents not in our custody.
- 11. The suppression of the freedom of the press, the elimation of another "voice", control of public opilion (another view); memopoly of the morning tabloid field. Further reply waits for the completion of our (plaintiff's) examinations before trial, of various defendants.
- Ancorp.Inc, American News Company Inc., Union News Co., Inc., Henry Garfinkle; William McCullough and other referred to in answer to paragraph 7, for the purposes to eliminate plaintiff as a competitor, thereby resulting in a monopoly for the New York News, Inc.,
- 13. Only competitor in the morning tabloid field to the defendant New York New., Inc was the plaintiff's publication, the Daily Mirror.
- stands strategically located (airports, railroad terminals, hotels etc) and particularly approximately, numbering 650 Union News owned orleased stands, controlled by co-defendants Ancorp. Inc. et al. (1)
- are within the knowledge exclusively of the defendants(referring to paragraph 7).
 - (b) See answer in paragraph 7 amongst others; such information exclusively in the possession of the defendants.
 - 16. (a) Knowledge exclusively in possession of the defendants.
 - (b) Same answer as (a)

actual prospective and a projected profits for the plaintiff, plus penalities allowed by law.

- 27. Answer is the same as to paragraph 26.
 - 28. (a) R&R Advertising Agency 350 Fifth Avenue,

New York Clay, N.Y.

- (b) 1971-1972
- (c) Approximately \$ 5,000.00 a week
- (d) Same answer as made to paragraph 22.
- (e) Same answer as made in paragraph 22.
- (f) Same answer as made in paragraph 22.
- 29. (a) (b) (c)(d)(e)(f) (g) Same answer as made to question paragraph 22.

. ROBERT W.FARRELL

DATID: New York York Tebruary 27th, 1979 Attorney for the Plaintiff 67 Fark Avenue New York City, N.Y. 10016

787-7001 516-248-8245

TO: TOWNLEY, UPDIKE, CARTER & ROCEPS ESQS. 220 East 42nd Street New York City, N.Y. 10017

BARRETT G.KREISBERG ESQ. Attorney for Henry (Harry) Garfinkle 104 East 40th Street New York City, N.Y.

Eugene Frederick Roth Esq. 230 Park Avenue Attorney for Amcorp. Inc. et al New York City, New York.

LETTERS re: ANCORP" bankruptcy"STAY" before Bankruptcy Judge JA15
RYAN'S final lifting of "stay" against written order dated

SEPT. 5,1974 ROBERT W. FARRELL ATTORNEY AT LAW 67 PARK AVENUE NEW YORK, N. Y. 10016 April 22nd, 1974 Hon.Richard J.Ryan Referee in Bankruptcy U.S.District Court Southern District Foley Square, New York 10007 71 Civ.1211 Re: Daily Mirror Inc., v.- Ancorp Inc., et al Dear Sir: I am enclosing copies of letters with regard to the above titled matter. A search recently of the filed claims still does not indicate that my clients clair has been filed against the bankrupt Ancorp. Inc., despite the letter of Ballor, Stoll & Itzler dated October 5th, 1974 admitting to their inadvertence. I have not ever received such information and would appreciate knowing if a creditors meeting has been scheduled and whatever other information or notices should be addressed to me. Thank you. Robert W.Farrell Attorney for the Plaintiff rwf/ms

JA16 JAMES W RODGERS
JOHN R SCHOEMER JR.
THOMAS P. TREDOWY
JOHN J. MACCHIA
EDWARD N. MAHER
WILLAM P. HINDMAN, JR.
ARDASTV L. HUGHES
RICHARD J. BARNES
JOHN PAUL REINER
JOHN D. CANONI
RICHARD C. KULLEN, JR.
JOSEPH F. KELLY, JR. TOWNLEY, UPDIKE, CARTER & RODGERS 220 EAST FORTY-SECOND STREET **NEW YORK, N. Y. 10017** STUART N. UPDIKE J. HOWARD CARTER COUNSEL TELEPHONE (212) MURRAY HILL 2-4567 WILLIAM A. ALPER CABLE: TUCARRO WILLIAM A. ALPER
MICHAEL S. BELOHLAVEK
FREDERICK D. BERKON
JESSE H. BRENNER
JOHN M. CALLAGY
RICHARD J. CODDING
RICHARD C. CONOVER
DOUGLAS C. FAIRHURST TELEX: NO. 12-7815 PETER C. GOULD SPENCER C. HUNT JAMES K. LEADER TERENCE J. LYNCH SLADE R. METCALF June 24, 1974 RAYMOND J. SOFFIENTINI LIAMS Robert W. Farrell, Esq. 67 Park Avenue New York, New York 10016 Re: Daily Mirror, Inc. v. New York News, Inc., et al. Dear Mr. Farrell: I have your letter of June 18, 1974. In his order dated June 5, 1974 which is endorsed on your moving papers which seek an order to permit you to engage in further discovery Judge Carter expressed his view that a stay of proceedings which is provided for in an order by Referee Ryan Entered on March 20, 1973 was proper and remains in effect. In light of Judge Carter's determination with respect to the effect of the stay order we believe it would be improper for the parties in this action to engage in any further proceedings unless Referee Ryan's order is modified to permit such proceedings. In view of the foregoing we must advise you that we are not prepared to participate in any further proceedings in this action and intend to fully adhere to the ruling contained in Judge Carter's order of June 5, 1974. In the event that Referee Ryan's order is modified we expect that Judge Carter will then determine your pending It should be clearly understood that our objections to the relief sought in your motion remain in full force and effect and this letter should not be construed as a modification of or a change in our position with respect to said motion. Sincerely, inch h Mark D. Geraghty MDG/cs

JA17

FREDERICK E. M. BALLON ARTHUR L. STOLL RONALD S. ITZLER KENNETH S. KNIGIN ALBERT M. FAUFMAN BURTON D. STRUMPF DAVID NADLER

DANIEL COHEN
IRVING SEROTA
BERNARD GLICKERMAN
RONALD B. GOODMAN
CLYDE M. SCHAEFER
BERNARD LOTH
PAUL MAUER
DONALD ROSENKRANTZ
HOWARD D. RESSLER

Ballon, Stoll & Itzler 1450 Broadway New York, N. Y. 10018

(212) 354-9000

ATTORNEYS

AND

COUNSELLORS

AT LAW

CABLE: BALFRED

August 6, 1974

BY HAND

The Honorable Edward J. Ryan Bankruptcy Judge United States Courthouse Foley Square New York, New York

Re: Ancorp National Services, Inc.

Honorable Sir:

We are in receipt of a Proposed Order together with Notice of Settlement prepared by the attorneys for Daily Mirror Inc. A copy thereof is enclosed.

The undersigned, as General Counsel for the debtor never received any notice of the proceeding which caused the preparation of the enclosed Order. After discussing the matter with your office and with the debtor's office, I have been instructed to inform the Court that the entry of the Order or any similar order is, at this time, strenuously objected to.

It is the debtor's contention that the hearing be reopened so that the debtor's position regarding the vacating of the stay may be advanced to the Court.

Very truly yours,

Ronald S. Itzler

Encl. RSI/11

cc: Robert W. Farrell, Esq.

Barrett W. Kreisberg, Esq.

Townley, Updike, Carter & Rogers Esqs.

Saxe, Bacon, Bolan & Manly Esqs.



ATTORNEY AT LAW

67 PARK AVENUE NEW YORK, N. Y. 10016

August 9th, 1974

Hon.Edward J.Ryan Bankruptcy Judga United States Courthouse Foley Square, New York, N.Y.

Re: ANCORP, INC.

Honorable Sir:

Upon receipt of the August 6th, letter from Ballon, Stoll and Itzler Esqs, I called at your office only to learn that you were on vacation to return Monds: August 12th, 1974. I inf ormed your secretary that this letter would follow.

ON Jly 17th, the date selected by your Honor for argument of the Motion , there was no one who appeared to oppose and your Honor stated to submit my Notice of Settlement of the Order and suggested that as a courtesy Ballon, Stoll and Itzler Esqs., be notified. This we did.

Your Honor will recall and the Motion papers have copies of these letters, that on Sept.11th, 1973 I wrote to you to inform you that in this listing of claims against Ancorp, Inc., there was no mention of the claim of Daily Mirror Inc., Ancorp, Inc., et al. This letter was forwarded to Ballon, Stoll and Itzler, Esqs., who replied stating on October 5th, 1973 that the non filing was an inadvertence and that an amendment would be filed within seven (7) days. A most recent search prior to the filing of this Motion does not indicate that hhis was ever done.

Your signature on the Motion papers dated June 27th, 1974 selected July 17th, 1974 as the return date, and it would appear that while the name of Ballon, Stool, and Itzler does not appear or required to be notified, the law firm of Saxe, Bacon, Bolan and Manly Esqs., the attorneys f or Ancorp, Inc., were in fac t so notified, on or about the 27th day of June 1974

With the facts as above stated, the reopening of this order for a hearing is without justification.

Very truly yours,
CC; Townley, Updike, Carterand
Rogers Esq., Barrett W. Kreisbengbesq. WSEmerBacon, Bolan & Manly E
and Ballon, Stock & Itzler Esqs.

JA19 September 30th, 1974 Hon. Robert L. Carter Judge United States District Court Southern District Foley Square, New York. Pe; Dai'y Mirror Inc./ Ne York News, Inc. et al 71 Civ.1211 Honorable Sir: Enclosed you will find a copy of an order signed by the Hon. Edward J. Ryan, Bankruptcy Court, Southern Dostrict, New York. This order was based on my Motion returnable on July 17th, which was not opposed. However on August 6th, 1974 the attorneys for Ancorp National Services, Inc., wrote the Judge requesting that they requested a hearing regarding the vacation of the stay. (Copy of such request enclosed.) This delayed matters considerably until on or about Sept. 5th, Ballon, Stoll & Itzler, Ancorp's attorneys withdrew their request for the hearing and the order was signed Sept. 12th, 1974. Following that the papers seemed to have been mislayed or filed in another folder making it difficult to locate. Finally the signed of ler was found and I am enclosing same herein. There is now a pending a Motion before your Honor dated, April 8th, 1974 made returnable on the 17th day of April, 1974 which was delayed due to the proceedings before the Hon. Edward J. Ryan,, and awaits your order. Thanking you, I remain, Sincerely, Robert W. Farrell 516-248-8245 rwf/ms

Ballon, Stoll & Itzler 1450 Broadway Now York, N. Y. 10018 FREDERICK E. M. BALLON ARTHUR L. STOLL RONALD S. ITZLER ATTORNEYS KENNETH S. KNIGIN AND ALBERT M. KAUFMAN COUNSELLORS BURTON D. STRUMPF AT LAW DAVID NADLER DANIEL COHEN CABLE: BALFRED IRVING SEROTA BERNARD GLICKERMAN RONALD B. GOODMAN CLYDE M. SCHAEFER BERNARD LOTH PAUL MAUER October 5, 1973 Robert W. Farrell, Esq. 67 Park Avenue New York, New York 10016 Daily Mirror, Inc. Re: New York News, Ancorp, etc. vs: Our File No. 4386.18 (FTC matter) Dear Mr. Farrell: We have your letter of September 11, 1973 addressed to the Honorable Edward J. Ryan, Bankruptcy Judge. We hasten to respond thereto. Your observation is correct. We inadvertently omitted from our Rule XI-2 affidavit the lawsuit described above. We have undertaken this date to amend that affidavit and the amendment should be filed within the next seven (7) days. If you have any questions with regard to this matter, please do not hesitate to contact the undersigned. Sincerely Ronald S. Itzler RSI/s cc: Hon. Edward J. Ryan

Arrangement oder Gwipter XI of

73-B-281

Linkspr

uit puring the District Court entitled DALLY MIRROR INC.

VOTEUS FOR ANSWERS NO. HENRY PARFINEDE, AMERICAN NEWS INC.

N. ON MEDS IN an ANGORP, INC., the AMERICAN NEWS INC., AND UNION
N. US ING being subsidiaries of the above entitled ANCORP, INC.

the deby the said plaintiff of the Order of the above in the debtor.

Introduce the said plaintiff of the Order of the above in staying all suits against the debtor.

Indicate the said that the said civil suit may proceed

indicate the said civil suit may proceed

And the papers having been filed with the Bukrup and said motion and said motion the Bukrup are referre this Court on the 17th day of July 1974 and said motion appears to the filed in opposition thereto.

Ant of in hore, the cold plaintiff having appeared to help appeared to help appearing in opposition.

the Count aving granted plaintiff's

the fore, it is one of

the particle Color HON JUDGE RUBERT L CARTER, Distiller Judge 10.

That the said civil suit may proceed forward without any restraint of the Bankruptcy Proceeding above entitled
until Linal Judgment; and or termination by settlement or other
disposition which may be made in the Civil Court, between the
parties therein and,

That none of the parties to said civil suit may or shall use the pending above entitled bankruptcy proceedings as a way or means of avoiding process of the civil court erein of the proceeding of the plaintiff thereof, or to avoid the submission in connection with said process of any officer, illustration of employee-agent as a witness to be examined, whether before trial of upon trial, and or any papers, records, documents bearing upon the issues of the civil suit, and particularly the infations between the plaintiff and any of the defendants, particularly the debtor ANCORP, INC., insofar as ANCORP. INC., is the corporate successor of the defendants, HENRY GARFINKLE, AMERICAN NEWS COMPANY INC., and UNION NEWS COMPANY INC., and any of its agents, present or past, as bearing upon the civil suit.

DATED Sept. 5th, 1974

HON EDWARD JARYAN
BANKBUSTRYCTURGERT
SOUTHERN DISTRICT NEW YORK

enalties

original proceeding was primarily concerned with practices in connection with sales of certain publications, including magazines, comic books and pocket books . . . it is well settled that the FTC could have included newspapers, in its order so as to prevent Ancorp's continuation of its practices by merely substituting newspapers for magazines

Ample Justification

"We hold that the district court here was amply justified in construing the order to encompass newspapers. . . . The purpose here was to prohibit Ancorp in the exercise of its market dominance from demanding and receiving from its suppliers rebates not offered to competitors."

The Second Circuit panel also upheld the amount of penalties, finding no abuse of discretion since Judge Bonsal had "explicity considered each of the factors delineated in" U. S. v. J. B. Williams Co., 498 F. 2d 438 (2d Ctr. 1974)."

Ancorp was represented by Saxe, Bacon, Bolan & Manley. Appearing for the government were Gerald A Rosenberg and Naomi Reice Buchwald, assistant U. S. Attorneys in the Southern District.

NYLJ 3/26/75

2d Circuit Court Penalties Against Ancorp

Civil penalties of \$204,200 against Annors National Section ices, which salls newspapers and other products at newsstands, for violation of a Federal Trade Commission bease and desist order has been affirmed by the Second U. S. Circuit of the U. S. District Court fo Court of Appeals.

The appellate court held that the order applied to the sale of newspapers, as claimed by the awarded injunctive relief. government, and that the lower court did not exceed Ma discretion in imposing the penalties. The government had sought maximum penalties of \$565,000

Unanimous Oplaion

Judge William H. Timbers wrote a nine-passe ominion in U. S. v. Ancery National Serp-ices (74-1214, March 21), that wiss concurred in by Judges Henry H. Friendly and Murre I. Gurfein. The cease and desist order became final in 1964.

The government brought the Ancorp from 1965 to 1969 had received compensation from three city newspapers in con-

playing th was not made available to other newsstand customers in compe tition with Anourp.

Based on a finding of 122 vi lations, Judge Dudley & Bones the Southern District of New York, fined the corporation in an order ... 1978 and ale corp then appealed.

question on apper!, as framed by Judge Timbers, whether the boose and order applied to newspapers.

"The language of the order ttseif," he stated; "surely is newspapers. It prohibits re spondents from receiving thing of value from any of their suppliers in connection with products for resale on newsstands operated by respondents action in 1970, alleging that or products purchased from any of their suppliers ...

"While it is true that the Continues on page 4, cotumn 6 ORDER OF HON.JUDGE CARTER

Re; Stay in Bankruptcy

JUI: 7 1074

DAILY MIRROR INC., V. NEW YORK NEWS INC., EARRY CARPIDIELE AMERICAN NEWS COMPANY, INC., UNION NEWS CO., INC., CO., ANCORF, INC.

71 CIV. 1211

ENDORSEMENT

MICROFUM

Plaintiff, Daily Mirror, Inc., has moved to require the taking of depositions of various individuals, to disqualify an attorney and his firm from representing any of the defendants, and to continue the action free of a general stay ordered in a bankruptcy action.

opposes the continuation of any discovery or other proceedings in the immediate action, relying upon a restraining order issued by Referee Ryan on March 20, 1973, In the Matter of Ancorp National Services, Inc., 73-8-281. That order, authorized by 11 U.S.C. \$714, otayed proceedings in any court where Ancorp is a defendant until a final decree in the bankruptcy matter or further order of the court.

Despite the fact that this case has proceeded thus far without reference to the bankruptcy stay, that order was entirely proper and appears to be still in effect. Nevertheless, a party may attempt to have it modified. The proper procedure for doing so is an application to the referee by whom it was issued. Only after such application, and upon its refusal, will this court consider whether the stay should continue to be enforced. See, In re Laufer, 230 P.2d 866 (2d Cir. 1956); In re Zeckendorf, 326 P. Supp. 182 (S.D.N.Y. 1971).

The motion is therefore denied without prejudice to renew it after application has been made and acted upon by the bankruptcy referee. The discovery schedule previously established will be appropriately adjusted.

SO PROBRED

Dated

New York, New York June 5, 1974

ROBERT L. CARTER

U.8.D.J.

CARTER D. 74 DECISION Oct. 10th, 1974

UNITED STATES DISTRICT COURT

JUDGE ROBERT L. CARTER United States Counthouse FOLEY SQUARE NEW YORK. N. Y. 10007

1 actober 10, 1974

Robert W. Farrell, Esq. 67 Fark Avenue New York, New York 10016.

Messrs: Townley, Updike, Carter & Rodgers 22n East 42nd Street New York, New York 10017

Barret W. Kreisberg, Esq. 104 East 40th Street New York, New York 10016

Megars, Saxe, Bacon, Bolan & Manley 39 East 68th Street New York, New York 10021

Re: Dailey Mirror, Inc. v. New York

News, Inc., Harry Garfinkle,

Union News Company, Inc., American

News Company, Inc. and Ancorp, Inc.,

71 Civil 1211

Gen*lemen:

Mr. Farrell has filed with me in a covering letter dated September 30, 1974, a copy of an order by Bankruptcy Judge Rvan lifting the restraint here-tofore interposed in re Ancorp. Inc. in these proceedings.

his April 8th motion is pending before mev That motion was denied without prejudice to plaintiff's right to rehew it after application had been made and acted upon by the bankruptcy judge in an endorsement dated Jupy 5, 1974. Therefore, I will treat the letter as a renewal of the April 8th motion. It would have been the better practice for plaintiff to have renewed the motion formally with a return date. However, the April 8th motion has been served on all parties.

TO ALL COUNSEL:

October 10, 1974

Defendants have until October 23 to file any opposition, and plaintiff may reply by October 25.

Ribut Of Carter

JUDGE FRANKEL'S LETTER OF AUTHORIZATION UNITED STATES DISTRICT COURT

UNITED STATES COURTHOUSE NEW YORK, N. Y. 10007

May 1, 1975

JUDGE MARVIN E. FRANKEL

Robert W. Farrell, Esq. 67 Park Avenue New York, N.Y. 10016

Re: Daily Mirror Inc. v. New York News, Inc., et al, 71 Civ. 1211

Dear Mr. Farrell:

This refers to another of your lengthy letters, this one dated April 26, 1975.

I have tried to make clear to you before now that the court will look with utter disfavor on further attempts to expand and continue discovery which should have been completed long ago in this very ancient case. I remind you of that basic principle now.

As to the several requests enumerated in your letter, they are all denied with one exception. The defendant, New York News, Inc., should treat this letter as a direction to allow you to see the Bill of Sale requested in your item 7(a).

Beyond this direction, you are entitled to no relief at this time. If and when you believe relief is warranted, you must proceed by proper motion papers, with suitable affidavits, bearing in mind throughout the very slim likelihood that any further discovery will be allowed before this case goes to trial.

Very truly yours,

Marvin E. Frankel

cc: To All Counsel

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT

DAILY MIRROR INC.

Plaintiff

-against-

71 CIV 1211

NEW YORK NEWS, INC., HARRY (HENRY)
GARFINKLE, UNION NEWS CO., INC.,
AMERICAN NEWS CO., INC., and
ANCORP, INC..

Defendants

NOTICE OF MOTION

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of
ROBERT W.FARRELL ESQ., and upon all the pleadings and proceedings
heretofore had herein, the undersigned will move this Court, before
the HON.Marvin E.Frankel, to be held at the Courthouse, Foley Square
New York, on the Analysis of May 1975 at 9:30 AM in the forenoon
or as soon as counsel may be heard for an order:

- 1. Granting leave to the plaintiff to examine before trial, as essential to preparation thereof, in the light of new facts and developments, the individuals who signed and executed the bill of sale from the New York Mirror (Hearst) to the New York News Inc., dated October 15th, 1963.
- 2. Granting leave to examine Myron Garfinkle and the office records now under his control dealing with the years 1969 through 1972 and the continued incomplete examination of Willie Levine and William McCullough.

3. Granting leave for the further discovery and for the production of the following documents: (a) the bill of sale, in full, of the sale of the New York Mirror to the New York News Inc.,

dated October 15th,1963; and the minutes of the Board of Directors of the American News Company Inc., (Ancorp,Inc) for the years 1969 through 1972.

- 4. Granting leave for the reargument for the disqualification of Roy Cohn and members of his firm, from representing the defendant Ancorp, Inc. et.al.
- 5. Granting our request, in light of the foregoing, a reconsideration of the timings and the adjustments now necessary in the scheduling of this case for trial, and for such other and further relief as may be fitting and proper.

DATED: NEW YORK, N.Y. May 16th, 1975 Yours, etc. ROBERT W.FARRELL Attorney for the Plaintiff 67 Park Avenue New York, N.Y. 10016 516-248-8245

TO: Townley Updike, Carter & Rodgers Esqs. 220 East 42nd Street New York City, N.Y.

> Saxe, Bacon, Bolan & Manley Esqs,, 30 East 68th Street New York City, N.Y.

Barrett Kreisberg Esq. 104 East 40th Street New York City, N.Y. 10016 UNITED STATES DESTRICT COURT SOUTHERN DISTRICT

DAILY MIRROR INC.,

Plaintiff

71 CIV 1211

AFFIDAVIT

-against-

NEW YORK NEWS, INC., HARRY (HENRY)
GARFINKLE, UNION NEWS CO., INC.,
AMERICAN NEWS COMPANY, INC., and ANCORP,
INC..

Defendants

STATE OF NEW YORK)

5S.:

COUNTY OF NEW YORK)

ROBERT W.FARRELL, being duly sworn deposes and says:

I am the attorney for the plaintiff herein and I am fully familiar with the facts herein.

This affidavit is made in support of the annexed notice of motion for discovery relief as set forth, etc.

HISTORY OF THIS ACTION AND ITS DELAYS

This case wasoriginally instituted in 1971 in behalf of the plaintiff by Vincent Debo an attorney of experience in antitrust matters. Shortly thereafter he was compelled to withdraw from this matter, upon accepting full-time employment as resident counselfor the Bangor-Punta Corporation.

Search for counsel thereafter required an extended period of time, during which period I was compelled to proceed with this matter.

I, thereafter, sought to avoid acting as attorney of record for the plaintiff, since I was to be an important witness in its behalf.

However, I was compelled to accept employment as a member of the Legal Aic Society, of Nassau County in the criminal division, because I had suffered financial setbacks on behalf of the defendants, as we alleged in the complaint. I have since opened my own law office.

I had been Publisher and Executive officer of the plaintiff corporation "Daily Mirror" until its demise.Prior thereto I have spent more than 25 years in the publishing field, more than 15 as a columnist , and many other years as chief editorial writer.

The commencement of this action was on or about April 1971, and thereafter the proceedings included the usual extension
of time for pleadings, and such other usual steps between the
parties in proceeding.

In the meantime, the defendants made no point of pressing the matter on, and seemed entirely content to leave the case at rest with the plaintiff.

Finally, the defendants (New York News Inc.,) made a motion for the first time, asking for the dismissal of the prosecution, in or about August of 1973.

With the institution of that motion, I, as plaintiff's substituted attorney, proceeded with the utmost vigor to carry on the prosecution of this case.

However, the defendants, now/called upon to cooperate and avoid delays, under one guise or another, were essentially responsible for slowing up this case, seeking, by one means or another, its dismissal or termination!

On July30th, 1973, plaintiff served its notice, pursuant,

to Rule 30 of the Federal Rules, for the testimony of the President of the New York News Inc., the testimony of defendent Garfinkle, the testimony of the president of American News Co., Inc., Union News Co., Inc., Ancorp Inc., by its president, and the defendant New York News Inc., by its circulation Director.

That notice was made returnable on the 20th day of August 1973.I am annexing hereto a copy of said notice.

From that time, to this, we have been endeavoring with these people to overcome the many obstacles put in our path, either under the guise of ourtesy extensions of time to be granted to the executive witness, the absence of witnesses on trips out of town, while we were pressing for day-to-day examinations of the witnesses.

In the course of these examinations, we were constantly shuttled, back and forth, in the procurement of necessary evidence, through estimony of these executives, who repeatedly stated they were without necessary information, and that some other executives in the respective organizations might have to be procured for that testimony; or that records not in their possession would have to be obtained, and which of course would require further extensions of time.

In the meantime, matters were being held off, on demands, for rulings, which had to be made periodically by means of the various defendant's counsel's interference with progress.

It may be fairly stated, that we have been in the process, continuously, of examining, and asking for examinations of the witnesses, first noticed for examinations, and other witnesses, whose,

testimony became essential by the very nature of the prior witnesses offers of evidence, to be obtained from their nominees.

Such witnesses were, e.g. in the category of Willie Levine, Archie Gordon, and William McCullough.

Then there was another type of required witness. The principal defendant Garfinkle, having testified that his son Myron Garfinkle, had succeeded to his office in controlof defendant, Ancorp, Inc, American News Co, Inc., and UnionNews Co, Inc., and in light of Garfinkle pleas of inability to either produce documents or answer questions of an essential nature, the testimony of the successor son Myron, became essential.

Myron Garfinkle is therefore a witness, whom weare compelled to call to complete the testimony, as evidence demanded of his father.

District Court J.Frankel, recently, in keeping with this principal of essential evidence in preparation for our trial, directed the defendants "News" to make available to us for examination three such witnesses, not yet examined.

Those witnesses were Willie Levine, Archie Gordon and William McCullough so-called "President", but actually a servile "deputy" of defendant Garfinkle as was disclosed.

In each of these cases it became necessary as the examinations developed to obtain further testimony in necessary completion of their partial disclosure, or their claims of inability to furnish the required information.

For some three years, we have now been waiting for a certified copy of the basic bill of Sale, herein, by which the def-

endant New York News Inc., acquired the publication New York Mirror and its assets (certain), which the District Court Judge, herein finally ordered to be turned over for inspection on May 1,1975.

That delivery has not been made as ordered.

The testimony of Willie Levine, revealed considerable matter, which required further elaboration, he being a "questionable" character employed by the defendant Ancorp in a questionable manner.

His testimony, and that of his associate William McCullough were both characterized by their repeatedly repeating the questions asked, instead of answering them.

The one-hour examination of Willie Levine, to which his attorney soughtto confine his answers, proved wasted, and not enough, to develop the truth, which he seemed to posses. The same proved true of McCullough.

It is respectfully called to your Honor's attention, that it was these matters of essential necessity , that prompted me to address to you my letter of April 26th, 1975.

I now therefore, make that letter an exhibit on this Motion , which your Honor directed us to make, in place of relying upon such letter. We ask respectfully, that it be re-read here in full.

The aforementioned Bill of Sale was prepared by the defendant's (New York News Inc.), present attorneys. It specifically provided a clause barring competition in such newspaper field for the next 10 years, etc.; and it was particularly in full force during the crucial years of 1969 through 1972.

These attorne's have now withheld the names of the signators of that contract among other things, thus to supress the necessary information, and to stifle any examination before trial of the signators. (We submit it is obvious, in any event, that plaintiff is not bound, in a conspiracy action ,by, or limited to, the contents of such a conspiratorial agreement, in contractistinction to an ordinary breach-of -contract action for damages.)

Circumstances of the execution of that contract and the intent of its execution and its executives can best be discovered by the testimony of the signators and their counsel.

WE have already examined their attorneys, who professed to know nothing, until they were further and more profondly examined.

They also pleaded privilege of client attorney relationship, and therefore made necessary the examination of the signators.

At this time, we cannot refrain from pointing out, once
again, in relationship to the entire history of delay, that, for almost
one year or so, in which, we, the plaintiffs , were compelled to merely
wait, while the defendants counsel pretended to insist upon terminfor such purposes
ation of this entire case, using/the usual routine and standing
omnibus stay (of Bankruptcy Judge Ryan), in the Ancorp. Inc., matter.

All the defendants counsel joined in that insistence pretense, none of whom finally offered any opposition to the granting of the removal of that stay, as demanded by the plaintiff.

That extended situation held up Judge Carter and plaintiff in prosecution for almost one year.

It should be noted that Mr. Geraghty makes agreat point of the fact that our examinations have been neither volumnous nor

extensive.On the contrary he seeks to capitalize on thatmodest appraisal of plaintiff's efforts to examine witnesses; repeatedly so declared by him in his latest brief.

Mr. Geraghty induced the Court to grant him a considerable length of time to prepare annualleged motion for summary judgment.

HE had suggestedthis, in place of your Honor's original suggestion for a memorandum, focusing on the triable issues, by both parties; that is the Pre-Trial memorandum.

However, Mr. Geraghty has in fact sabotaged and undercut his own motion for summary judgment, by specifically suggesting at the conclusion of his affidavit , therefore, suggesting and inviting....." the plaintiff to come forward with its affirmative evidence" while self-servingly discounting thus far the very important evidence , developed by the plaintiff in its examinations before trial out of the defendant's mouths.

Perhaps, after our discoveries are concluded, we should return to the Judge's prjected pre-trial memorandum device, as the Lest working method for focusing the issues.

I respectfully submit that to be deprived of these requested and continued examinations, would be a serious setback to a proper preparation for trial of such issues—difficult at all times in any event.

The Court is asked respectfully to consider that much of our efforts, once we undertook with vigor to prosecute, were disrupted naturally by the fact that, three times the Court assigned judges to take over this action.

This resulted in confusions and further delays, which

were erroniously placed at our door.

It should be stated here also, that the defendants'
entire course and direction, and defensive strategy employed
by their numerous attorneys, seems to have been, that the defendants
never communicated with one and each other, and that the plaintiff's
newspaper never existed for them.

That was commonly evident from the conduct of counsel and there witnesses upon the various examinations.

Thus, naively, defendants made matters on discovery more difficult for the plaintiff. Thereby, they hoped to defeat plaintiff's complaint of conspiracy, as if that were the sole means in law, for establishing anti-trust combinations and agreements.

THE ABSOLUTE NECESSITY OF DISQUALIFICATION OF ROY COHN AND MEMBERS OF HIS FIRM

I submit that this matter has not received its essential consideration, and I am asking for re-argument herein, solely as to our long-standing application for the disqualification of Roy Cohn Esq., and members of his law firm, as continuing counsel for defendant Ancorp, Inc and its subsidiary companies.

It is important-to avoid inevitable disruption of any trial, to be had herein, of the central issues; because Roy Cohn is a long-standing "key" witness for the plaintiff, and who was also consulted at great length as a prospective attorney to represent the plaintiff in this action.

I further submit that there have been numerous Federal case authorities, as well as local State authorities, appearing repeatedly on the front pages of the New York Law Journal, which

bar attorneys from appearing before the Courts, who stand in adverse or conflicting interest with adversary parties.

Of this, there can be no doubt, we submit, both on the facts herein and on the authorities law relating thereto.

We cite, in passing only two of the numerous authoritive cases which the Law Journal(N.Y.) reported. The law firm of Webster Sheffield et al. was disqualified in Federal Court (Cinemany Cinerama) Feb.19th, 1975 74-3549; and an attorney named Morrow D. Mushkin, (Fed Judge Mitton Bollack) citing Emle Industries Inc.dated May 21st, 1973.

Most earnestly, we ask your Honor to bear this in mind in determining responsibilities as to the dilatory activities of the respective parties, and also considering and reconsidering now, the time factors governing true preparation by the plaintiff for a trial of this action.

We submit, most earnestly, that this action is one of wide public concern; that the constitutionally protected interest of the public, in the untrammelled dissemination of the news, is now directly involved herein; and that it was first directly brought into the imperilled area, when this Court granted discovery of the aforesaid Bill of Sale, which had been secretly executed by the defendant New York News Inc., in suppression of the Daily Mirror as a competitor—as the contract so reads.

WHEREFORE, plaintiff prays that this Court grant the relief herein demanded.

Sworn to before me this 11 (1-11)

19th day of May 1975

ROBERT W. FARRELL

11 11 11

Dated May 5, 1975
their very nature being dependent upon such in
formation now in the exclusive possession of the
defendant."

With respect to Interrogatories 8 through 28 plaintiff's response was merely "Ditto".

- 17. Interrogatory 29 requested the identity of witnesses to be called at trial, the dates and places of interviews of such potential witnesses and any memoranda which reduced such interviews to writing. Plaintiff responded: "Unknown at this time; and not related to the complaint as such."
- of Interrogatories stated, in essence, that it was not aware of any facts to support the central allegations of its complaint and would have to obtain such information from defendants.
- 19. On February 4, 1974, this firm served a second set of interrogatories (Exhibit K in the Appendix). Plaintiff's answers (Exhibit L) were served after the completion of all depositions other than those conducted during the last month.

 Interrogatories 3 through 25 of the February 4, 1974 Interrogatories are virtually identical to Interrogatories 6 through 29 of the April 6, 1971 Interrogatories.
- 20. The responses to virtually all of the Interrogatories were essentially the same, i.e., words to the effect that the information sought was in the "exclusive possession" or "exclusive knowledge" of the defendants. The only exceptions to this pattern (excluding responses where plaintiff either supplied information which was not responsive to the question posed or

where the response was nothing more than a conclusory statement) were in the following instances:

(a) In Interrogatory 7 plaintiff was asked to identify the individuals and firms which plaintiff alleged in paragraph 8 of its complaint combined and conspired to violate the anti-trust laws and to supply certain particulars as to their involvement in the conspiracy. Plaintiff's response in paragraph 7 of its answer was:

"Ancorp, Inc., Henry Garfinkle (Harry), Myron Garfinkle, Mrs. Garfinkle, American News Company Inc., Union News Co. Inc., Manhattan News Company, Gaynor News Company, Archie Gordon, Newark News Suppliers, Greater Boston Distributors, Willie Levine, William McCullough, Mr. Lynch, treasurer for the New York News, Inc., Jack Underwood, Harry Kane, "Sol" Giglio, amongst others."

No explanation of the nature of the involvement of the persons in the alleged conspiracy was furnished. Plaintiff has now taken the depositions of the majority of these individuals and has had an adequate opportunity to take the depositions of the remainder.

(b) In Interrogatory 9 plaintiff was asked if the defendants held meetings or conferences pursuant to the conspiracy and then was asked to give particulars of the conspiracy specifically, among other things, the names of those associated with the News who were involved. Plaintiff answered that there were meetings, and named Jack Underwood, Edward M. Maher, James Rodgers and Mr. Lynch "amongst others" as those associated with the News who were at said meetings. No further information was supplied in response to Interrogatory 9. Plaintiff has taken the depositions

1970 or prior thereto. Mr. Flynn, who was the Chairman of the Board of the News, answered that he did not engage in any such conferences. Plaintiff also asked (Interrogatory 24) if Mr. Flynn knew Henry Garfinkle, William McCollough, Willie Levine, Jimmy Gaynor, Archie Gordon or Sol Giglio and if Mr. Flynn had oral or written communications with them from 1970 to 1973. In answer, Mr. Flynn stated that he knew only Henry Garfinkle and Jimmy Gaynor but had no conversations or written communications with either of them relating to the Mirror.

- 23. It would serve no useful purpose to attempt to summarize all of the depositions taken by plaintiff, but we believe that no evidence of any kind supporting a conspiracy theory has been uncovered. A few highlights may warrant specific mention:
- (a) In his deposition, Mr. Garfinkle was asked repeatedly if he ever talked to anyone at the News about the Daily Mirror. Mr. Garfinkle's testimony was that he did not recall having any such conversations in this regard and that during a conversation he had with Mr. Underwood on a subject completely unrelated to the Mirror Mr. Underwood asked why he was no longer distributing. This conversation took place after the Mirror had been removed from the Ancorp newsstands.
- (b) In his deposition, Mr. Underwood, a member of the Board of Directors of the News and its Director of Sales, was asked repeatedly if he ever talked to anyone at Ancorp about the Mirror. Mr. Underwood testified that he recalled one conversation with Mr. Garfinkle in which he asked Mr. Garfinkle why the Mirror was no longer on Mr. Garfinkle's newsstands. Mr. Underwood testified

JA42

Certain exhibits attached to Deft New York News Inc. 3tin Notice of Motion for Summary Judgment dated May 5th, 1975

Report

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A Rough Dealer

Control of Newsstands Gives Henry Garfinkle Power Over Publishers

hext fall. He Gets Special 'Subsidies' From Newspapers, Halts Sales to Enforce His Will

A Terrified Employe Quits

By RONALD KESSLER Staff Reporter of THE WALL STREET JOURNAL

As Henry Garfinkle alights from a just-arrived jetliner at Boston's Logan International Airport, a sheriff's car moves onto the runway. Mr. Garfinkle, given a half salute by the shertff, is whisked in the police car-dome light flashing and siren occasionally wailing-to his 125 spots in Marblehead, Mass., summer home.

Sheriff Howard W. Fitzpatrick of Middlesex ple may be County often does such a favor for Mr. Garfin-involved." kie. At the Marblehead home, one is likely to find preetigious visitors; among them have been Samuel I. Newhouse, owner of 22 newspapers, and Frank S. Hogan, New York County District Attorney. In New York, his usual realdence, Mr. Garfinkle has been seen with Los Angeles Mayor Samuel W. Yorty, White House aide Patrick J. Buchanan and Irving R. Kaufman, a Federal appeals court judge.

Mr. Gammale claims at times that he has had associations with Presidents Eisenb



Kennedy and Job This is consid fluence from humble beginnings-poverty New York's Lov East Side, a departure from ligh school at age 15 to sell fruit, and a newsstand at the Staten Island ferry ter-

minal in New York-his first enterprise he was 20.

Now he is chairman and chief executive of ficer of Ancorp National Services Inc. (American News Co. until last April 30), which own can News Co. until lass April 20, Union News Co., largest newsstand retailer of newspapers and magazines in the country. And he privately controls two magazines wholesalers, Manhattan News Co. in Marhattan and Greater Boston Distributors Inc. in the Boston Greater Boston Distributors Inc. in the Boston area, with close to a monopoly on distrill of major magazines in both areas. More he is the large

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tels at airports, and has a non-controlling interest in Boston Herald Traveler Corp., owner of a Boston newspaper and television station (however, the Federal Communications Commission hasn't renewed the TV license).

Yet despite his stewardship of a company listed on the New York Stock Exchange (Ancorp. of which he owns 15%) and his other holdings. Mr. Garfinkle is little known to the public. This may be because his primary activity has been the complex, though relatively unpublicized, business of distributing publications for the publisher, it is crucial A new or obscure publication given prominent display at key newsstands, may quickly grow in circulation and revenues. A publication denied such exposure may languish. Even an established publication can be helped or hurt by newsstand placement.

But distribution is crucial for the reader, too, determining whether he gets the publications he wants. And the patrons of Mr. Garfinkle's Union News stands may have noticed that periodically some publications mysteriously disappear from view. Such major publications as Time, Life, Fortune, Newsweek and Reader's Digest have been withheld for months and sometimes years at airports, railroad and bus terminals and subway lines. Newsweek, McCall's and U.S. News & World Report currently aren't available at stands along the Long Island Rail Road in the New York City borough of Queens.

A Hard Dealer

There is no mystery about these absences, say publishing and distributing officials, who charge Mr. Garfinkle with deliberately banning their publications to enforce his own singularly tough methods of doing—and building—business. Mr. Garfinkle is, in fact, a seared and controversial figure in the circles—where his fortune has been made.

Publishers and distributors have testified (in a Federal district court civil case in 1968) that Mr. Garfinkle uses the Union News retail outlets (now numbering about 650) to force publishers to deal with his wholesale outlets (Manhattan and Greater Boston), or to prevent them from dealing with would be competitors. And, they say, he uses this leverage to extract from publishers special subsidies or rebates not given to other retailers. Mr. Garfinkle denies these accusations.

A Family Man

However, Union News currently gets \$30.000 a year from the New York Times and \$26,000 from the Daily News in New York for "services" that other retailers perform free. Sources at both papers say that the payments are made because of the "implied threat" of being denied the Union News outlets. Indeed, in 1960, Union News dealers in metropolitan New York put the Times under the counter or in their back rooms during a 12-day dispute over payments, on orders from Mr. Garfinkle.

Such events lend some substance to a frequent boast attributed to Mr. Garfinkle—that he has the publishers "in my hip poc!" "He vehemently denies having such influence with publishers. "If I make a wrong move, they chop my hands off," he says. He also denies intentiona! holdups of publications. In an interview, he first denies receiving a subsidy from the Times, then puts it at \$4,000, which is \$26.000 less than the figure given by Times circulation executives.

Now 64. Mr Garfinkle is a diminutive man five feet tall and slight of build) with vast energy, a quick sense of humor and a freekled face with large brown eyes. Volatile and emotional, he speaks frequently of his wife of 43 years, Anne, and their two adopted children,

A Rough Dealer: Control of Newsstand Distribution JA44 Provides Garfinkle With Power Over Publishers

Continued From First Page

Gail, 25, and Myron, 23. He is proud of being the first Jew to be selected as a trustee of Boston's Lahey Clinic. He estimates his charitable contributions run into six figures annually.

Mr. Garfinkle's assets, estimated at between \$20 million and \$40 million, include two New York City residences-an apartment on Central Park West and a suite for entertaining at the Hampshire House, a hotel on Central Park Jouth. His Marblehead house, which has a salt water pool and overlooks the ocean, has an estimated value of about \$150,000. There, too, he does much entertaining, on weekends.

Inquiries into Mr. Garfinkle's dealings elicit widely differing assessments of him from friends and foes. A former associate offers this explanation: "Henry has two personalities. His business personality is gracious and charming and improves with the importance of his guest.

His real personality is ruthless."

Despite Mr. Gartinkle's demurrers, investigations suggest that he indeed has placed unusual pressures on publishers over the years. There also emerges a curious transaction in 1968 in which International Airport Hotel System, a publicly owned company in which M. Garfinkle has a big interest, repaid him for a loan in company stock that eventually yielded him a profit on paper of more than 200%. And there is evidence of associations of questionable persons with Mr. Garfinkie's enterprises.

According to Federal authorities, Joseph (Little Joe) Notaro, a lieutenant in the Mafia family of Joseph (Joe Bananas) Bonhano, served Manhattan News in 1964 as a \$150-a-week "inspector." Notaro died in 1966 after convictions of criminally receiving stolen goods and alcohol tax violations. His son, Joseph A. Notaro, now is Manhattan News' labor attor-

Another member of the Bonnano Mafia family, Salvatore Giglio, in the early 1960s was a partner with his brother John in E&M Trucking Co., which had no trucks but did work for Manhattan News (a Manhattan spokesman says E&M helped supervise the wholesaler's operations). Sal Giglio has been a fugitive from a Federal narcotics indictment since 1962. John Giglio still works for Manhattan News, as Mr. Garfinkle's chauffeur.

A former officer of E&M Trucking, and an acknowledged long-time friend of Sal Giglio, was William Levine, 54, Mr. Garfinkle's brother-in-law and right-hand man. "I'd give my life for this kid," says Mr. Garfinkle of Mr. Levine. Mr. Levine now is vice president of Manhattan News and Greater Boston (operations of the two companies were merged last March) and

treasurer of International Airport.

Though Mr. Levine denies knowledge of the transaction, his East Meadow, Long Island, N.Y., home was sold in 1966 to Salvatore Bonnano, son of Joe Bananas. Salvatore Bonnano currently is under indictment on a charge of mail fraud. The house is listed in Mr. Levine's name but various records indicate that it was rented and then secretly sold to Bonnano three years ago. Mr. Levine says he assigned an agent to sell the house and signed papers with a gr-between. He says he doesn't know why the house remains listed in his name with the Nas-Mu County clerk.

Agile Supporters

that he didn't know that earnings would rise. A stockholder's suit filed in Federal Court in New York by Continental Bank & "vst Jo. of Salt Lake City last year accuses the company of a 'waste of corporate assets."

Arm's Length

The \$2.70 price on the stock was based on an evaluation by the Roston office of Harris, Upham & Co., investment bankers. Senior vice president and director of the office is Leo 7. Daley, a director of American News (later Ancorp) since 1962 and a frequent visitor to Mr. Garfinkle's Marblehead home.

Did Mr. Garfinkle get special treatment? Mr. Daley concedes that the researcher who made the evaluation of the price knew of the friendship with Mr. Garfinkle, but he says. 'That wouldn't influence his judgment; it was

an arm's length transaction.

In the early days, Mr. Garfinkle had an angel-publisher Newhouse. As a young man, Mr. Garfinkle worked at a newsstand at the Staten Island ferry terminal. Mr. Newhouse, owner of the Staten Island Advance, used to pass the newsstand regularly, and he recalls being impressed by Mr. Garfinkle's "executive potential." With a \$4,000, interest-free loan from Mr. Newhouse, Mr. Garfinkle took over the stand.

Stands followed at the Port of New York Authority bus terminal, Newark Airport and other locations, all of them under the name of Garfield News Co. The Boston wholesale operation was acquired in 1941, the New York one in 1947, both with aid from Mr. Newhouse.

With the take-over of American News Co. in 1955, Mr. Garfinkle's combined enterprises put him in a position to exert pressure on publishers. According to testimony given in the Federal district court trial in New York last year by Peter A. Riley, former circulation director of Playboy magazine's national distributor. Mr. Garfinkle in 1956 "forced" Playboy to switch its Manhattan and Boston wholesale operations to Mr. Garfinkle's companies, Manhattan and Greater Boston, as a "concession" to get Playboy sold at the many Union News stands.

Hugh Hefner, Playboy editor and publisher, at first agreed to the switch, Mr. Riley testified, because he felt he had to get his magazine "out there to get the advertisers' attention." But the service from Manhattan was "terrible," Mr. Riley said, and a year later Playboy attempted to revert to its original

"Cement Boots"

The result he testified, was that other New York-area wholesains threatened that "if we wanted to stay in business, we had best Ray with Maphattan." (According to other testimony in the suit, most wholesalers in New York concede one another strictly defined gengraphical operating areas, by long-standing agreement.) And, Mr. Riley'testified, an official of the Newspaper and Mail Deliverers Union promised him "a pair of cement boots" unless Playboy stayed with Manhattan News. It did.

Mr. Riley's testimony came in a civil antitrust suit brought against Manhattan News by Periodical Distributors Inc., a maverick wholesaler that has sought to compete with Mr. Garfinkle's companies. Periodical Distributors lost

price, however. And Mr. Garfinkle contends longer have access to the Union News stands, the way things are at the present time." (Curtis Circulation Co. is a subsidiary of Perfect Film & Chemical Corp., which acquired it from Curtis Publishing Co. It distributes Look, Ladies Home Journal and-since last October-Time Inc. publications.)

The fear of hol also seems to ! behin the subsidies paid nhattan News by e N-w Daily News. Patrick J. York Times and Reynolds, circulation manager of the Times, says the \$30,000 a year is paid for the right to display signs promoting the Times at Union News stands. Jack E. Underwood, circulation manager of the Daily News, says his paper makes payments for the same reason. The Wall Street Journal began in 1966 making such payments at an annual rate of \$6,000, but discontinued them in January 1968.

For One, For All

An official at the Federal Trade Commission says that under Federal law such payments must be offered to all retailers if they are offered to any. Mr. Reynolds acknowledges that other retailers display Times promotional signs free, and he confirms that other retailers haven't been offered subsidies. Periodic checks of Union News stands since January have found no newspaper display signs up. The Daily News concedes that it doesn't check to insure that its signs are up.

Mr. Reynolds of the Times her this comment: "Henry Garfinkle gets as much as he

In 1966, the FTC issued an order prohibiting payments from magazine publishers to Union News, which got nearly \$1 million in magazine payments in 1958. Newspaper publishers weren't included in the ban.

Apparent threats from the Garfinkle camp were experienced by the Wall Street Journal at least twice during the preparation of this story. O. April 17, William A. McCollough, president of Ancorp, called a Journal sales official and told him, "I hope they (the Journal's editors) realize we are the largest news distributor of the Wall Street Journal in the United States." A public relations representative for Mr. Garfinkle called this reporter with the same message on the same day.

A still-disputed incident raises questions about the methods of Mr. Garfinkle's operations. The incident involves Terry J. Griffin, formerly circulation manager at Greater Boston Distributors. William Levine and Samuel L. Nichols, president of Greater Boston, say that Mr. Griffin had illegally been assisting two newsstands in Harvard Square, Cambridge, to avoid paying their bills to Greater

Boston.

Mr. Griffin allegedly was removing billing punch cards at the Greater Boston office, so the dealers never got all their bills, though their accounts seemed to be paid up. Mr. Nichois brought charges against Mr. Griffin, and he was convicted of conspiracy to commit larcency in Boston Municipal Court last February. He is appealing.

Rough Stuff

Mr. Griffin tells a different story. He says Mr. Levine called him in to a back office of the company last October and gave him an assignment: He was to testify falsely that he had conniend with the two dealers to chest Greater

have engineered in take-over. Mr. Colin now is under Federal indictment on various charges, including fraud and conspiracy to

bribe a public employe.

Mr. Garfinkle's partners in forming Internatina. Airport in 1958 included Jack B. Cooper and Sryen R. Burton. Cooper, then an officer of a Flor dog track, served three months in prison in for income tax evasion in a dea! to sell warplanes to the Dominican Republic. In 1964, he invoked the Fifth Amendment in a Senate committee hearing when asked about social and business dealings with former Senate aide Bobby Baker.

Mr. Burton was an officer of the Freinont Hotel in Las Vegas when its president and principal stockholder was Ed Levinson, later convicted in a Federal court of "skimming" gambling profits from the hotel's take to avoid taxes. In 1962, Mr. Burton testified before a Federal grand jury that he managed properties for Joseph (Doc) Stacher, an underworld fig-

Mr. Garfinkle says the partners in International Airport were introduced to him by a third party, Morton F. Fisk, then president of the Seville Hotel in Miami Beach, Mr. Fisk confirms this. Mr. Garfinkle declares that he evered himself from Cooper and Mr. Burton when he discovered their other dealings. didn't want to be associated with them," he

Keeping in Touch

Similarly, Mr. Garfinkle disclaims knowledge of having gangsters such as Salvatore Giglio or Notaro associated with his enter-prises. "I'd throw them in "4," he says of Mafia types. However, a former associate says of Mr. Garfinkle: "Heary doesn't want a pin moved in his companies without him knowing about it. He has people everywhere who report directly to him, and everyone goes running to him to tell him everything that goes on.'

In a recent five-hour interview, Mr. Garfinkle denied having ownership or control of Manhattan News or Greater Boston Distributors (both are in trust for his children, he said). However, in a 1964 Federal Communications Commission hearing, he testified that Manhattan News is "my wholly owned company." The trustees, he testified, were himself and his wife. "If you want to know when we have a (board) meeting," he said, "we sit around the house. I have a meeting with my He acknowledges that the trust ar rangement hasn't been modified since 1964.

Mr. Garfinkle also seems somewhat disingenuous about his profitable stock transaction with International Airport in January 1968. He now owns 33% of the company. The directors, most of whom were Mr. Garfinkle's associates. issued him 100,000 shares of company stock in payment for loans he had made aggregating

\$270,000.

The transaction indicated a market price for International Airport stock of \$2.70 a share. although it then was selling over the counter at a bid price of \$3.75 to \$4. When profits of \$563,-000 were announced for the fiscal year ended Jan. 31, 1968, compared with a \$50,000 loss for the previous fiscal year, the price soon rose. No quarterly reports had been issued during the year. International Airport stock was quoted this week at \$8.50 bid and \$10 asked Thus, the value of the stock given to Mr. Garfinkle in return for the loan has more than tripled.

Mr. Garfinkle denies that the stock was fetching about \$4 at the time of the stock payment. A brokerage house that makes a market in International Airport stock confirms the

wast - distributed in Mannattan because the national distributor refused to go along with "exorbitant" payments demanded by Manhattan News

Mr. Green testified that he tried to get cop ies from another wholesaies in the borough of Queens to sell at his newsstant "Well," he said, "the ceiling fell in. . . . We were told by the newspapers union that we would be cut off of newspape. "I we attempted in any way to transport ma azines from one stand to another, so the net result was that we gave it up

Mr. Garfinkle denies that the October 1967 Playboy was held up in Manhattan. Playboy. its national distributor and news dealers in

Manhattan tell a contrary story.

The court case also produced testimony purporting to show an attempt to drive out competition, at LaGuardia Airport in Queens in 1957. Mr. Garfinkle had discontinued American News' local wholesale branches in New York City, but his Union News stands still provided retail service in the area. A problem arose: The LaGuardia section of Queens now would be getting wholesale service from Pcriodical Distributors, the company that attempted to compete with Manhattan News.

le J. Purcell, then president of Select nes Inc., at the time retional distributor .me, Life, Reader's Digest and McCall's, testified that he had assumed Periodical would be the wholesaler for these magazines at La-Guardia. He was wrong. Mr. Garfinkle, according to Mr. Purcell's testimony, refused to accept delivery of Select magazines unless they came from a wholesaler of Mr. Garfindle's choice - not Periodical.

Hell Broke Loose

There was a six-week impasse, during which none of the magazines was on sale at LaGuardia. Terminal newsstands are considered particularly important; it is there that advertisers can see their message reaching the public. An executive of Time Inc. testified that 'all hell broke loose" at the big communications corporation because of the holdup. Finally, Mr. Purcell testified, a deal was communicated to him by Irving Bitz, a criminal identified as an associate of Johnny (Johnny Dio) Dioguardi, a member of the Thomas (Three-Finger Brown) Lucchese Mafia family. Bitz then was a member of the Newspaper and Mail Deliverers Union (as Salvatore Giglio had been before his flight in 1962).

The solution, Mr. Purcell quoted Bitz as saying, had been "approved" by Mr. Garfinkle. Union News would accept Select's magazines from two wholesalers, Pacific News Co. and Seljan News Co. Select complied, and the impasse ended. Neither Pacific nor Seljan was

competitive with Manhattan News.

And Pacific, it later emerged, had a tie to Manhattan News. In the 1959 McClellan labor rackets committee hearings, it was disclosed that Manhattan News had given Pacific's president, Michael (Ski) Spozote, an unexplained interest-free loan of \$7,500. Sol Levine, brother of Garfinkle intimate Willie Levine and then a vice president of Manhattan News, took refuge behind the Fifth Amendment rather than answer questions about the transaction.

The import of an actual or threatened holdup of publications apparently hasn't been missed by national magazine distributors. In the 1968 Federal District court case, Carl E. Papenhausen, president of Curtis Circulation Co., told why Curtis continues to deal with Manhattan News. "If I leave Manhattan News with Curtis magazines," he testified, "we no

one grosses \$12,000 a week.

Mr. Griffin says he was told that the company wouldn't press charges against him, and that he would be rewarded with a good job at one of International Airport's hotels. He says he refused. Then, he says, Mr. Levine be-k- s oned to a third man who had accompanied them into the back office.

"Why don't you cooperate and do what Willie soys?" the unidentified third party allegedly said. Mr. Griffin says he continued to decline, whereupon he claims he was slapped on

"Then the man pulled out a silver revolver and pointed it at my head," Mr. Griffin says. 'I was crying, and I said I'd do anything they want." But Griffin then, in effect, quit by failing to come to work any more.

Mr. Griffin says Greater Boston brought charges against him to discredit him. The chief witnesses against him were M Nichols and a news dealer in Central Squa. Cambridge who testified that Mr. Griffin had done favors

for him in billing matters.

On the evening of April 2, after the case had been tried, three men forced their way into his apartment, Mr. Griffin claims. He says they pulled him from behind a shower curta.n where he was hiding, threatened him with an apparent concealed gun and told him, "We'll get you good next time." Mr. Griffin says he fled screaming and since has changed his rest dence twice out of fear for his life.

Mr. Levine denies that an outsider was with him on the October day when he talked with Mr. Griffin. But Greater Boston employes say they saw a man "looking like a gangster out of the movies" accompany the two men. As to the April incident, neighbors in Mr. Griffin's original apertment-and a police report-confirm that three men did visit Mr. Griffin.

Mr. Levine concedes that he did hire the three men, and identifies them as private de-tectives who were hired to track dow. more stealing. One of the three, Arthur S. Pugsley, Sr., confirms that the visit was made to Mr. Griffin but won't comment on the alleged threat to Mr. Griffin, because "the case is before the courts." And the news dealer who testified against Mr. Griffin says that when he testified he was afraid that Greater Boston would cut off his newspapers.

Mr. Garfinkle says he knows nothing of the Griffin case. However, Myron Garfinkle says he recalls discussing the affair with his adop

tive father.

Building Success

Financial analysts fmd much to commend in Mr. Gar kle's management of American News-Ancorp, Amputating the wholesale and distribution activities in 1957 removed \$81 million in sales, and the company recorded an extraordinary loss of \$7 million for that year. But by 1959, American News was earning its highest profits in 10 years, on 55% of its 1951 sales.

Last year American News reported a profit of \$2.8 million, or \$1.80 a share, on sales of \$168.9 million. This was down from the yearearlier profit of \$3 million, or \$2.01 a share, on sales of \$166.7 million. Mr. Garfinkle traces this decline to start-up costs on new ventures.

Ancorp is diversifying, with a major emphasis on food services. It owns the Savarin restaurants. Newsstand sajes now represent less than 15% of the company's total volume. The company, which is 10% years old, has been paying continuous quarterly dividends longer than any other company on the Big Board.

Manhattan News has been losing an undisclosed amount of money on steadily declining sales, now estimated at about \$6 million a year. It currently owes magazine distributors

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about \$1.8 million in past due accounts. Mr. Garfinkle attributes the loss trend to stealing by employes. Greater Boston makes a profit of about \$100,000 a year. Its sales, estimated at about \$5 million a year, have been declining. There have been many complaints from Bos-

ton-area retailers of poor service.

To his associates, former and pest, and to the publishers and distributors he deals with, Mr. Garfinkle remains an object of controversy. "Henry would have made a great robber baron, but in today's business world he's an anachronism," comments one former associate. And a distribution has this accessment. ciate. And a distributor has this assessment: "Henry was a poor boy who wanted money and wanted to be accepted by important people, but most of all he wanted to be in a position where no one could squeeze him. He wound up squeez-ing everyone else."

ime Strike Force Regins Investmention to Garfinkle News Distributing

By Royan Kr. and

Faw VOEK. The Joint Organized Crime e Force for New York's Southern District being an investigation into the magazine been especial established companies, of The Joint Organized Crime y Gutonkle. The present focus to on positi ntitro 4 a prets of Me; Garrings a whole

sauthle is chamman and chief execufiner of Ancorp National Services Inc. ale American News Co., a New York

Eleman company that operates Union Mr. Garfinide's wholesale outlets are try. Mr. Garfinide's wholesale outlets are rivolely held Manhattan News Co. in Man-

in and Greater Basion Distributors Inc. in factor atta. using Department Antitrust Division atv. from Washington also have been intering distribution-industry sources in New

about possible auticompetitive methods in; hout the industry, indicating to the: era that a broad investigation may have

a recent weeks, these developments coning Mr. Garfinkle's companies have as o

n place

The Ecderal Trade Commission has begun nve ligation into acknowledgements by Anthat it has been receiving subsidies from New York Times and the New York Daily
The papers have confirmed that the subeven't hade available to other revictors, also ely under an FTC coase-First order covering discriminatory allow-is, could if found in violation-be subject from a penalties and fines. The newspacould be served with cease-and-desist orbut wouldn't be subject to other penalties. Federal agents as igned to the Organized ne Strike Force for New England have le what one law enforcement official dees by a former employe of Greater Bos-Indichulor, that he was the victim of an alien plot by aides of Mr. Carringte

national distributors of magazines, with v its buriness from Manhattan News and and July 17 against Manhallan News, many \$250,000 in pant-due billings. Union then refused to sell publications distrib-be. Triangle at Ha Mantiallan borough ind, ear such publication, New Little ind and the refuent more and the refuent more and the control of the cont are national di tellimora lo Curtta Circula-Co. where publications are necepted at 1 Kew wounds. After a lapse of one tastic, Viv. magazine is again sold at Union "milet: through Cuite."

Trangle Publications Inc., one of the larg-

ted by Sees No Bards

the content to said had week there is "no . the tore tig thous. "They know all ... " the Garfinkle sald, referring to p .1 .. may 19 "We've been investigated by the year make a wrong move in this busithey copy tour head off."

track investigation has long been de trabata in melu try official i

the soft new popular and constraint of the soft of the compatition through indicate action would only be detrimental to the public and

"It would rreate a war that would put a lot of whole object and publishers out of his med," a whole object contends. This would happen, be ays, because overlapping delivery routes would raise code, reducing publishers' profit

Lut another di tributor a sert sast competition "seoutha"t have any worse effect than it has had in the eight, candy, and drug wholesaforg burmers." The e products, often old at outlet. that sell magazines and news Spets, are generally distributed by numerou. competitor

"The way it is now, if a new dealer wants to do busines with another whole other; there's no place to go. this distinutor rays. "At a fe tion, and the whole aler jets high profits." Cancelation Threat

Publichers and distributors quoted in a July er The Justice Department declined to 13 Wall Street Journal story charge Mr. Garfinde with using the threat of canceling nale of their publications at his retail Union News lands to force them to deal with his wholesale operations or to drive would be competitors cut of the lucrative Poston and New York areas. Such publications on Time, Life, Reader's Digect, New week, and the New York Times peel, New week, and the New York Times have been willhelman from display at Union News stands of various times

Mr. Cartinkle denies that the publications are banned for competitive reasons. "Nothing in the law can make you handle what you don't want to handle," Mr. Garfinkle raid recently.

He said he refused to sell the July 23 issue of New York magazine because, "We don't accept from more than one wholesaler." Triangle had franzierred Hs New York wholesale millet from Manhallen News to Metropolitan News Co, which formerly distributed buty newspapers, such as the Times and The Wall Street Journal, Mr. Garfiilde sald that if he dealt with more than one wholesaler, The clerks wouldn't know where to send the returns." Returns refers to unsold copies of magazines, which are returned to the wholeraler for credit. He conceded that Thion News accepts newspa pera from multiple wholesalers or delivery outlets, but he contended the elerks know how to innke up newspaper returns.

A New York magazine circulation official anid he had "no choice" but to awitch to an-

other debiliator that dealt with Mantattan New one, "About 20% of our circulation is at from New food, and I was vital for units, in the food of our circulation is at the food of th From Alvania Station, and all New York subway him

Problem New York magazine, Trimele der in Tiblie, distilled & Cont. properties of material and condition The Tate of the published by Triangle the control of the description of the control of the description of the description of the description of the control of the c meld to prominent deplay at news toad, ander Federal law, such allowances may not be legal if they aren't offered on a proportional basis to all competing newsstands.

Although the Times and the News have coneeded that the subsidies they paid to Union Howa weren't offered to other retailers, Mr. Garfinkle disputed last week that the subsidies violated the FTC cease and desist order covering Union News and Ancorp. He contended the order applies only to subsidies from magasinca, not newspaners. He added that the paymenta involved were "peanuts.

The order - Issued Jan. 10, 1961, and of-firmed by the U.S. Court of Appeals for the Second Circuit April 27, 1962-bars Ancorp and Union from receiving subsidies when purchasing "products for resale on newsstands."

A Times lawyer said last week that Mr. Garfinkle was notified July 10 that the payments-of \$30,000 a year-would cease. A News lawyer said invoices for March and thereafter hadn't been paid, although he said he doesn't know when the checks-amounting to \$26,000 a year -were stopped. Mr. Garfinkle said both papers stopped paying about the same time.



Kirkpatrick Sale: SDS and the Media

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June '73 75¢

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Million, Extend Read All About it.

Extra, Extra Road All About It.

BY JAY LEVIN

54s. magazine arrived in the world a year-and-a-half ago with an unprecedented flood of national publiary and immediately sold extremely well for a new magazine in most places where it appeared. Yet despite the ballyhoo, and for all the early success, would-be readers will still not find Ms on the airport newsstands in New Orleans, Los Angeles or a number of other major cities. Nor can they buy it at several important retail centers throughout the South and Midwest or in one or two large supermarket chains. Clearly, an audience for the feminist magazine exists wherever women live. But just as clearly, some purchasing agents won't handle Ms. because they object to what it stands for, or because they have unilaterally decided that the customers they serve would object.

Ms.'s difficulties are rare but hardly unique. Evergreen Review, the moderately radical, avante-garde magazine that had to reach a New York audience or perish, tried desperately a few years ago to get on the Union News Co.'s newsstands, which dot the city's transportation centers. At one meeting with Evergreen representatives, William A. McCollouth, the politically conservative president of the Union News parent company, Ancorp, held up an issue of the magazine with a girl on the cover draped in an American flag. "I'm not going to put out shit like this," McCollough said, hastening Evergreen to its grave.

For years, Holiday magazine was unable to penetrate the newsstands at Chicago's O'Hare airport one of the best markets in the country for periodicals. The man who owns the newsstand concessions there, Joseph Henly, a crony of Chicago Mayor Richard Daley with a reputation for keeping

Jav Levin is a New York reporter. His article was underwritten by a grant from the Fund for Investigative Journalism.

The business process behind the routine purchase of a newspaper or magazine in the U.S. is at best byzantine and inefficient and at worst corrupt.

anything critical of hizzoner off his stands, had a personal pique against Holiday. The magazine had consistently refused to give one of its preferential dining awards to a restaurant owned by a member of Henly's family. Only after Holiday changed national distributors a year-and-a-half ago, signing on with a company whose representative was on good terms with Henly, was anyone able to persuade him to let Holiday breach his airport bastion.

· ew acts are quite as routine as the purchase of a newspaper from the corner kiosk or a magazine from a Venn Station newsstand. But the business process behind these millions of daily transactions occasionally can be as brutal and byzantine as the maneuverings in the corporate boardrooms of Louis Auchincloss. Newspapers, magazines and paperback books don't make their way inexorably from publisher to reader. In most cases, periodicals and paperback lines must first win acceptance by one of a handful of circulation companies-New York-based corporations, primarily, such as Independent News, Kable News and Publishers Distributing Corp. which handle national distribution for publishers, or for those publishers whose products they deem worthy. These monoliths arrange shipments to local wholesalers around the country, each of which may take into its warehouse as many as 3,000 different publications and 200 paperback titles a month, to be sorted and trucked to retail outlets. The retailer, then, must cope with the glut, with the profusion of titles competing for scant display space. At every step in this distribution system people make choices about which titles to handle and which not, thus exercising a form of editorial power as surely as the editor who spikes a story. Moreover, inefficiency and, in some instances, corruption are a constant irritant to publishers. In some cases, organized crime runs the show (see page 20). But perhaps worst of all, the system is easily abused in ways that affect what shows up on the stands.

The monopolies of the local wholesalers are a case in point. In 1957, the American News Co. shut down the magazine distribution agencies it operated in 350 U.S. cities because they were earning minimal profits. In one blow, distribution was cut off to 95,000 retail clients, and the field was left to whomever desired it. Invariably, the business fell to the competing agency in each town, often a firm that had started out delivering the local newspaper. With rare exceptions, these companies have operated ever since without competition. In fact, the U.S. and Canada are now divided up by 550 wholesalers that by and large concede one another exclusive territorial rights. Like most monopolies, the wholesalers fare very well. A distributor-(continued on page 11)

ship in a small town will gross a half-million dollars a year, and big agencies such as those in Chicago, Washington, Manhattan and Los Angeles, can take in \$20 million or more. Publishers come and go, but you seldom hear of wholesalers going bankrupt.

To a significant degree, these independent distributors (IDs as they're known) decide what people in their area get to read-and what's kept from them. They distribute about 80 per cent of all national publications that seek retail display, including all the best-selling magazines, and about 50 per cent of the paperbacks (the remainder are put out by special book jobbers or shipped directly to volume retailers). The arithmetic here is important: There are 3,000 different periodicals and 110,000 paperback titles in print, with another 400 to 600 new books pumping from the presses each month. But the average retail outlet can display only 50 to 150 magazines and maybe 150 paperbacks. More than anyone, it is the local wholesaler who selects the books and magazines that go on the racks.

The demise of the American News Co. agencies left such decisions in the hands of men who for the most part had come up through the newspaper distribution wars, knew the trucking business and the ways of the streets, and were accustomed to doing business on a basis of friend-ship and mutual favors. As often as not, they ruled their monopolies like little kings, and occasionally would allow—and still do—their personal prejudices to influence their business decisions.

Since Ramparts' inception, local whole-salers periodically have withheld it from retailers in one place or another. The most glaring incident involved a 1970 issue with a cover story offering \$10,000 for information that would lead to the arrest and conviction of a cop who had killed a black youth. Wholesalers in several cities decided the issue was offensive and refused to deliver it. For a long time, the wholesaler in Madison, Wisc., a man named Harry Tobias, used a tactic with Ramparts favored by many distributors when dealing with disliked publications. Tobias would deliver only a handful of copies, just enough to avoid an outcry but far fewer than could have been sold in that university town.

Other distributors have other targets. A few years ago, for example, a Life magazine article



off the stands in that city for 24 hours, finally appearing only after publicity forced its release. The local wholesaler, Alan Molasky, it turned out, was trying to protect some buddies cited in the Life article.

In recent years, computer-wise sons out of Harvard Business School have been gradually taking over the distributorships from their fathers, and such excesses are on the wane. When outright censorship does occur now, it is often as much the product of community pressure on the wholesalers as of their own prejudices, but even so, the monopolies are no less intrusive than ever, though in more subtle ways.

In the old days, when the balance of power still lay with them, national distributors would send out new magazines confident local IDs would somehow find space to test-market them. Now, confronted with a crush of competing titles and not eager to try any new ones, more than 100 wholesalers demand to review a new publication before it is shipped, including agencies in such major cities as

Philadelphia, Dallas, San Juan, St. Louis and Pittsburgh. The Charles Levy Co. in Chicago goes further, asking for advance sheets explaining the new magazine even before it sees a copy. With new paperbacks, most local wholesalets pet advance looks at covers and blinbs. The high wholesalets have paperback specialist who then help the hoss choose at the smaller agencies, the mate at the top does it all.

system works well for the tew best sellers and the few best selling lines and only hapha andly for all the rest. As one circulation manager complained "Unless it starts selling manediately, the average book has a shelf life of only 10 days. Now let's say you have a book that's selling well without being a best seller. Your job as a salesman is to get the wholesaler to reorder that book. But most of them won't. They'll just take the new books and the best sellers and to hell with your solid little gem." Given their monopolies, once IDs take a title off their racks, there's no way for it to get back.

The same monopoly system that give: O wholesalers so much say in choosing what publications get on the stands, doesn't encourage them to do a good job with those titles they do distribute. Ideally, the wholesaler should check the racks in each retail outlet at least a couple of times a week, refill the empty spaces and, perhaps most important, move titles from one location to another so that each has a maximum opportunity to reach potential customers. Unfortunately, however, few wholesalers either "dress the stands" or keep tabs on sales as well as they did when they had competition. Only a handful follow the practice of Hudson County News of New Jersey, one of the largest IDs, of sending special field men into retail outlets to do that kind of work. Instead, most wholesalers simply have their routemen their truck drivers - drop off tied-up bundles of magazines and paperbacks, and then they trust the retailers to display them intelligently.

To try and compensate for all the inefficiency, publishers must put out thousands of extra copies, hoping bulk will cover for the lack of accurate sales information. This helps, but the cost (continued on page 16) The wholesaler monopolies also create extreme pressure on prices. Magazines pay anywhere from 12 to 20 per cent of their cover prices to IDs (retailers get 20 per cent), the rate varying both with the magazine and the wholesaler. Time, for instance, allows wholesalers a basic price of 16 per cent, which works out to eight cent per copy out of the magazine's 50-cent cover price. But like all other magazines, Time pays an extra penny or two to the

big wholesalers whose monopoly positions in major population centers gives them enormous power.

Paperback publishers are under the same gun. They pay anywhere from two to 10 per cent of the cover price (the retailer gets 40 per cent), and again the rate varies with the muscle of the local wholesalers. Bantam, the industry giant, gives a basic allowance of two to six per cent, which on a 95 cent books works out to a range of less than two cents a copy to about five-and-a-half cents. In addition, Bantam has incentive formulas that enable wholesalers to earn as much as 10 per cent-or 91/2 cents a copy-if they can either increase sales or reduce the number of returns. Small paperback lines, however, sometimes offer a direct payment of 9 per cent just to get service from a local wholesaler that is giving most of its rack space to the big companies.

In the old, rough-and-tumble days, a lot of wholesalers who understood the value of an under-the-table, untaxed buck knew how to take advantage of such competition. But by all evidence, the industry now is as clean as any in Nixon's America,

they can be called that—usually come in the form of free books from salesman of the small lines—Lancer, Midwood, Grove, Award—desperate to get rack space any way they can. "It's not put forward [by ID's] as a demand; it's the publishers who make the offers," explains a sales manager for a small book line. "It's just that they [wholesalers] do such a lousy job, it's become accepted that if you want them to do anything for you, you pay. You have to. There's so little room on the stands. The big publishers command 85 per cent of the rack."

As much as publishers complain about the performance of wholesalers, not many want to see them broken up. The consensus is that only chaos would result from an effort to restore the old competitive system. The Federal government doesn't seem troubled about the monopolies either, at least so long as no single company acquires too many local franchises. Yet, right now, this is one of the two industry trends that could pose a real threat to the publishing industry. And the Molaskys father Alan and son Mark—may be the supreme

example of what wholesale monopoly power run amok could mean.

Alan Molasky is one of the old-line, get-itwhile-you-can tough boys who for years controlled the Pierce News Co. in St. Louis. With that as his base, he and his son began buying up IDs in other areas. In Canada, they acquired a half-interest in the Toronto agency, then took over the distributorships in Hamilton, Ottawa, Cornwall, Brantford, Kingston, Chatham and Windsor. Then, in 1971, when another company bought an agency in Kitchener that the Molaskys had been eyeing, they allegedly put on the kind of squeeze that long had made them one of the high-priced and more difficult whole salers to deal with. According to a special Canadian commission, the Molaskys used the weight of all their franchises to try to force two major national distributors - Triangle Circulation (TV Guide, Seventeen) and McFadden-Bartell (romance magazines, mostly)-to switch their business from the Kitchener group to a company the Molaskys were salers, the Molasky's ii. particular, weren't putting books from Canadian publishers on their racks, intervened with a law that blocked the Molaskys from acquiring any more Ontario outlets.

Meanwhile, a grand jury in New Orleans last year opened an investigation into a similar attempt by the Molaskys to force that city's wholesaler to sell out to them. According to both industry and government sources, the Molaskys warned the wholesaler, Maurice Rufa, that if he didn't sell they'd open a competing agency. When Rufa refused, the Molaskys allegedly again went to the national distributing companies and demanded that they switch their magazines and paperbacks to a company they would run in New Orleans.

Mark Molasky, the 24-year-old president of the St. Louis company, also allegedly counterfeited book covers in Buffalo last year—returning them to publishers for credit as if they had come off unsold copies. The Molaskys' behavior in general, and the counterfeiting in particular, persuaded both national distributors, and publishers—with the acquiescence

and force it to sett all its franchises, which the Molaskys supposedly have now done.

The government has also moved against another industry giant, ARA Services, Inc., the biggest vending machine company in the country. ARA owns about 20 per cent of all local wholesalers, including behemoths in L.A., Washington, the Bay Area and Hawaii. Although the company has been on scrupulously good behavior-being more efficient than most and slightly more reasonable about its fees-it has more power than even God should have over publishers. Aware of this, the Federal Trade Commission filed an anti-trust action against ARA and in March announced a consent decree under which the company agreed to divest itself of several agencies and to accept a 10-year moratorium on acquiring new ones. Despite the decree, the consolidation of wholesalers by companies other than ARA goes on apace, and in the last decade alone the number of independent agencies has dwindled by 300.

The second trend that could bring trouble

JA5



outlets by local wholesalers. There are now between 400 and 500 agency owned retail stands, with more being added daily a fact which pleases publishers worried about the paucity of display outlets. But the industry already has a vivid example of what the combination can mean.

wo years ago, Henry Garfinkle decided to punish The New York Times. Suddenly, his Union News Co. sharply cut back its daily order of the paper. At the busiest and most important newsstands in New York City-Grand Central and Penn stations, the Port Authority bus terminal, the suburate the almosts, the Times became companied.

guaranteeing it access to the Union stands. But the newspaper had grown dissatisfied with Greater Boston's inefficiency and impatient with its excuses. So Nat Goldstein, then the Times' circulation manager, signed a delivery contract with Earl Mullare, owner of the magazine distribution company in nearby Brockton, Mass. Mullare had worked for Garfinkle in Boston before buying his own agency, knew the local retailers and concessionaires and was interested in challenging Greater Boston for the newspaper distribution business. His sally into Boston was a serious threat to the empire, already fighting to hold onto its magazine business in the face of a formidable challenge from another company, Interstate News. Garfinkle responded by dumping the Times from Union's Boston stands. In New York, where city politics and company finances prevented even Garfinkle from just banishing the Times, the squeeze was put on by cutting back on deliveries.

one of this was unexpected. More than anyone. Garfinkle had learned to exploit the newsstand distribution system. He had grown up on the rough streets of the Lower East Side, and his business ethics were forged in the 'thirties, when you made your deals with whatever local mob boys had to be appeased and you used whatever clout you had to make money, even under-the-table cash. As he moved from owning one newsstand to heading a giant chain, Garfinkle purchased respectability along the way, donating to charities, acquiring politically influential friends, serving as a hospital trustee. But as a businessman, he remained the same: a small, incredibly energetic man who was both willful and ruthless. No ody in the business was more savage in defending his borders or more remorseless in bringing publishers to heel. In 1960, he ordered his newsstand clerks to put the Times and the World Telegram under the counter until they allowed him to sell the paper for more than the cover price, then 10 cents for the Times and six cents for the Telegram. He lost that battle, one of his rare defeats

The Times being the Times-at least as sure f its power as Garfinkle was of his-it made the switch in Boston despite all this. Goldstein, who had brought the Times' newsstand revenues from \$5 million a year in 1948 to \$60 million, was accustomed to feuding with Garfinkle from a position of strength. In Boston, he had Mullare set up vending machines to circumvent the Ancorp boycott. In New York, pressure was brought on the agencies that rented Garfinkle his newsstand space-the Port Authority, the Penn Central Railroad, the Metropopolitan Transportation Authority and the airlines-to intercede in the Times' behalf. Union News also received complaints from its customers and from its clerks, who were paid a percentage of sales. By early this year, Goldstein could say that sales at Union outlets were off by only 1,000 copies a day.

But if the Times could go the distance with Garfinkle, few other publications would even climb in the ring. Union News' near monopoly on New York City transportation facilities—Kennedy Airport excepted—gives it a power and position impossible to ignore. More than that, it gives it at times a crucial role in a publication's survival.

In 1970. Robert Farrell, an attorney who had once been publisher of the defunct Brooklyn Eagle, revived the New York Daily Mirror, the old tabloid competitor of the Daily News. Although the paper was no grand fling at journalism—it used UPI copy up front and a stable of horseracing experts in back—Union News accepted it from Farrell's original distributor and gave it display. Then Farrell made a mistake. He shifted distribution to another New York giant, Metropolitan News, whose Bronx subsidiary was beginning to encroach on Garfinkle's Manhattan News territory. Union News—as even Metropolitan had predicted—immediately dropped the paper. Stripped of its big outlets, the Mirror foundered in little more than a year.

he biggest names in periodicals, the mass

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wo years ago, Henry Garfinkle decided to punish The New York Times. Suddenly, his Union News Co. sharply cut back its daily order of the paper. At the busiest and most important newsstands in New York City-Grand Central and Penn stations, the Port Authority bus terminal, the subways, the airports—the Times became somewhat hard to find. Those copies Union News did accept sold out early, their space quickly filling with other goods. In the hard eyes of 68-year-old Henry Garfinkle, the Times had committed the ultimate transgression—encouraged someone to compete against his empire.

At the time, the empire grossed \$150 million a year. Called Ancorp National Services, Inc., it included the Savarin restaurant chain, an industrial feeding company named Crotty Brothers and the linchpin, Union News. With 150 key newsstands in New York City, and another 100 in major transportation centers and hotels around the country, Union News was one of the nation's largest and most powerful distribution chains. It sold \$33 million worth of newspapers, marazones and paperback books each year. Moreover, Garfinkle and his family owned a large Canadian newsstand chain. Garfield News, and two magazine wholesaling companies, one in Boston, the other in Manhattan. Garlinkle's Manhattan News Co, held a virtual monopoly in its area on the distribution of major magazines to retail outlets, and until a few years ago. Greater Boston Distributors, Inc., did almost as well lucrative businesses that brought in as much as \$20 million a year. Together with Union News, the two wholesale operations formed a system that no one really bucked: If you wanted your magazine on the Union stands in Manhattan or Boston, you hired Garfinkle's wholesalers to deliver it. And you hired them to deliver it not just to the Union stands but to all retail outlets .. their territories.

Though not a magazine, the Times for years was distributed in Boston by Greater Boston,

both willful and rathlets. Nobody in the business was more savage in defending his borders or more remorseless in bringing publishers to heel. In 1960, he ordered his newsstand clerks to put the *Times* and the *World Telegram* under the counter untal they allowed him to sell the paper for more than the cover price, then 10 cents for the *Times* and six cents for the *Telegram*. He lost that battle, one of his rare defeats.

The Village Voice vanished from Union stands a few years ago when the weekly refused to abandon its distributor, Dan List, and sign on with Garfinkle's brother-in-law, Willie Levine. List had assiduously build up the Voice's sales, but when Garfinkle made his move the paper had to choose between losing 6,000 in circulation or Willie Levine. The Voice stood fast for six weeks, then deserted List.

Late last year, six newsstand dealers were suddenly notified that they were being evicted from stands they rented from Union News. Union, which sublets more than 100 of its 140 subway outlets and keeps the best for itself, was punishing them for violating an unwritten rule that they buy only from Manhattan News. Unhappy with shortages in Manhattan's deliveries and overcharges on returns, unable to get the magazines they wanted-"I couldn't get the popular Spanish language mags," one complained, "and the hot items like Playbo, Cosmopolitan they save for their own stands and load us up with all the junk"-the dealers asked Bronx County News, the Metropolitan News subsidiary that was eyeing Manhattan News turf, to deliver to them instead. And so the cancellations. In danger of losing livelihoods they built from scratch by working 12 and 14 hour days, the newsies protested to the U.S. Attorney's office that they were victims of illegal restraint of trade. The office told them, they said, that it would make a recommendation to Washington; they'd be notified when there was a reply. There never was a reply. Only their pending suit in Landlord-Tenant court has kept the dealers from immediately being forced out.

Manhattan News territory. Union News—as even Metropolitan had predicted—immediately dropped the paper. Stripped of its big outlets, the Mirror foundered in little more than a year.

he biggest names in periodicals, the mass circulation magazines, also tread cautiously with Union News. Although retail display accounts for only about it per cent of their sales, good





newsstand position is vital to almost all major magazines for reasons other than the revenues it brings in. Display gives them visibility, builds subscriptions and gives advertisers some barometer of public taste. In New York, where the ad agencies and corporate headquarters are, an account executive or ad manager who doesn't see the magazine in which he had a four-color layout prominently on display at Grand Central as he sprints for the 5:15 to Darien is a beast whose roar will be heard.

With that kind of leverage, Garfinkle has long been able to coerce payoffs, however disguised, out of publishers and their national distributors. In 1959, the Federal Trade Commission accused Union News of forcing publishers to pay "illegal and discriminatory" promotion allowances totaling

ask Jon Lim?

supposedly for the right to put up display signs at Union stands. The Daily News was paying a similar "poster allowance"-\$500 a week, a subsequent Justice Dept. inquiry touched off by Kessler's article showed-and Kessler's own paper had from 1966 to 1968 kicked back \$500 a month. Dorothy Schiff's New York Post somehow escaped with a token \$50 a month. Questioned by federal investigators, Garlinkle's executives insisted the allowances were initiated by the papers and were indeed for display signs. Besides, they argued, were they to blame if the papers didn't offer similar payments to all retailers, as the law required? Newspaper officials, however, told a different tale: Union News, they said, had demanded special rebates for years, and only in the mid-sixties had the poster allowances been contrived as a subterfuge. The U.S. Attorney's office in Manhattan decided the newspaper people were telling the truth. In 1970, the Attorney's office filed a civil damage claim against Union News asking \$85,000 in penaltics. The suit hasn't been tried yet, but the government considers it a warning to Union News to cease demanding illegal payoffs.

The warning hasn't worked. Although the poster allowances ceased when Kessler broke the story, other publications are still making questionable payments to Union News. A number of executives admitted making such payments, but only on the condition that the names of their publications not be used. "We'd be called before a grand jury the very next day," one circulation manager said. An executive of a sports publication admitted it made special deals for display at the airport stands. The publisher of some detective magazine said he made bonus payments. Annual kickbacks were cited by the publisher of a teenage magazine. And an executive of a medium-sized paperback line said his firm gave a special discount to the airport stands. An executive of another paperback line was asked how his company concealed special payments from the government. "Who's gonna check the books," he replied. "It's all very simple," the former publisher of a music magazine said. "If you want to get on Ancorp stands, you call McCullough and he I tells vou how much he wante Then it's wome

50 or 60 per cent. Some people are willing to lose that money for display, but we're not in a position to do that."

Over the past year, the Garfinkle empire began to crumble. The newsstand operations held their own, but Ancorp's restaurants and industrial feeding operations, up against higher food prices, piled up deficits. In March, Ancorp filed Chapter XI bankruptcy papers. Henry Garfinkle, at 70, announced his retirement. His 27-year-old son, Myron, who had been head of Garfield News, took over. At the same time, the company's major creditor dispatched its own men to take executive posts at Ancorp. Myron and the new men promptly began to re-organize the company. One decision was to sharply reduce the number of magazine titles on the stands, dropping more than a hundred marginal publications. As [MORE] went to press, the list of titles to be jettisoned was still being prepared. And if the new men are to be believed, any possibly illegal payments formulas they find will be ended. "We're professional, modern businessmen, with, I think, some social consciousness," one of the new executives said. "The days of that little fuck Carfinkle tyrannizing publishers at the slightest whim are over." Nat Goldstein, who saw the Times restored in full measure to the Union stands when the new management took over, would agree. "They seem to be a little more liberal over there now." he said.

ith giant wholesalers such as Manhattan News using up most of the available display space, small publications—those that sell only a few thousand copies—find themselves in a serious crunch. Few of them can afford the rates of the major

First Rough Draft

by CHALMERS M. ROBERTS

"No American journalist has been so

of public taste. In New York, where the ad agencies and corporate headquarters are, an account executive or ad manager who doesn't see the magazine in which he had a four-color layout prominently and display at Grand Central as he sprints for the 5:15 to Darien is a beast whose roar will be heard.

With that kind of leverage, Garfinkle has long been able to coerce payoffs, however disguised, out of publishers and their national distributors. In 1959, the Federal Trade Commission accused Union News of forcing publishers to pay "illegal and discriminatory" promotion allowances totaling \$1.59 million over the previous two years. Almost all the big magazines-Life, Time, Reader's Digest, Newsweek, Look, The New Yorker-were making the payments in violation of the Robinson-Patman Act, which outlaws special "considerations" to any one customer. "These unlawful promotion payments received by Union News enable it to outbid many competitors for choice newsstand locations," the FTC said. "As a result, not only is its ability to coerce more illegal allowances increased, but the other newsstand operators' ability to compete is lessened or eliminated."

The FTC suit led to the widespread use of another device, the Retail Display Allowance. The RDA is a bonus publishers may legitimately give retailers in return for favorable placement on their racks and stands. The standard bonus now is an extra ten per cent of a magazine's cover price (the retailer normally gets 20 per cent). To be legal, however, the RDA or any special payment must be offered uniformly to all retailers. In practice, only the largest outlets-the Garfinbles, the supermarkets, the airport concessionaires and the drug store chains-have the muscle to collect, and many publishers admit they don't really pay for a special display, but simply to get on the stands. "They're just kickbacks. You don't get anything for it," one publisher said.

four years ago, Ron Kessler demonstrated how truly contemptuous Garfinkle was of FTC decrees. Kessler revealed that the *Times* for years had been paying Union News a \$2,500-a-month kickback,

special deals for display at the airport stands. The publisher of some detective magazine said he made bonus payments. Annual kickbacks were cited by the publisher of a teenage magazine. And an executive of a medium-sized paperback line said his firm gave a special discount to the airport stands. An executive of another paperback line was asked how his company concealed special payments from the government. "Who's gonna check the books," he replied. "It's all very simple," the former publisher of a music magazine said. "If you want to get on Ancorp stands, you call McCullough and he tells you how much he wants. Then it's your problem whether they're going to make the same tieal available to other retailers."

anhattan News Co., the wholesaledistributing arm of the Garfinkle empire, is equally despotic in setting fees. Although most circulation executives concede that Manhattan faces high operating costs-unionized truck drivers get \$300 a week -they muntain that the company charges at least four per cent more than distributors with similarly high costs. Its monopoly and its access to Union stands allows it to do so. Where another wholesaler would average 8 to 10 cents per copy on a 50-cent magazine, Manhattan takes in 10 to 12 cents-a difference of a few pennies that costs publishers a great deal. Moreover, Manhattan gets from many national distributors a guaranteed profit of \$200 per title for each publication it handles. Unlike special bonuses to retailers, the rates are legal.

A few important magazines actually lose money on distribution in Manhattan, but so long as they bear the losses and help maintain the Manhattan-Union rates, they force smaller publications that can't afford the rates to look elsewhere for survival. "We would have had to sell 60 per cent to break even," Robert Friedman, editor of the radical literary monthly, University Review, said after getting the Manhattan-Union rates. "If we hit 40 per cent it would be good. Rolling Stone sells only

News using up most of the available display space, small publications—those that sell only a few thousand copies—find themselves in a serious crunch. Few of them can afford the rates of the major

First Rough Draft

by CHALMERS M. ROBERTS

"No American journalist has been so close to so many big events as Chalmers Roberts. His journal is full of new information on the domestic politics and foreign affairs of the post-war period. Parhaps even better, it is a wonderfully evocative account of the age of innocence before the war."—Joseph Kraft

"The most remarkable parts of this admirable book are Reberts' reflections on the craft of journalism."—Washington Monthly

Award-winning veteran foreign affairs reporter for the Washington Post reveals never-before-told stories of secret deals and deeds that changed world history. "In an era when suppression and censorship hover over the news, Chalmers Roberts has given us a case book of what tough-minded reporting can mean to a free society."

—Marquis Childs



wholesalers, even if they can persuade the companies to take them on. The alternative is to depend on secondary distributors for survival. These are firms with only a few trucks that deliver local publications and those national titles too small and unprofitable to interest a big wholesaler. Without them, community newspapers, small intellectual journals, religious and ethnic publications and much of the underground press couldn't publish.

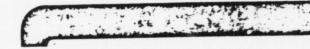
At their best, secondary distributors operate by cultivating retailers in those areas where their publications might be expected to sell. The Village Voice has thrived by using secondary distributors outside Manhattan. Similarly, Harvey Marshak, a young publisher's rep, has been using secondaries to give highly selective display to his titles, concentrating Fiction magazine, for example, in book stores and University Review in college book shops. Perhaps the best example is William DeBoer, a splendid old veteran who for 30 years has almost singlehandedly kept alive a variety of small intellectual magazines no other distributors would handle. DeBoer began with Common Sense, later distributed Commentary and Partisan Review, and now carries 23 titles, many of them university publications such as Antioch Review. Using a station wagon, DeBoer each week makes personal visits to bookstores and other retail outlets in New York to make sure his titles are properly displayed. And he cultivates retailers by offering them a 30 per cent discount rather than the standard 20 per cent and by diligently pasting up advertising signs or the covers of his periodicals at bookstores and on newsstands.

distributors give that kind of service. Most are only mediocre, and often they just can't do the job they promise. Last year, the radical New York newspaper, Ace, decided to abandon futile efforts at self-delivery and hired a company called Telstar to distribute it. Mike Acierno, who owned both Telstar and a large newsstand in lower Manhattan, asked Ace to increase its print run from 3,000 to 8,000 an issue, promising to get the papers displayed. In the end, he never put out more than a few hundred, and the paper died. It joined a long list of other publications which succumbed to the same disease, inept distribution.

Suggestions to improve the health of the publishing industry by improving the distribution system have made little headway. The latest proposal now being considered by several publications that belong to the Committee for the Diversity of the Press-among them, The New Republic, Ramparts, The Progressive, The Nation and [MORE]—is

to offer themselves in a package deal to "alternative distributors." These are small companies, formed at the height of the antiwar movement to find newsstand space for local radical publications no one else would distribute. The head of the best of them, Jim Kennedy of Detroit, has proposed expanding the handful of remaining alternatives into a network that would now handle small national publications, giving them the kind of pinpoint placement they need to reach their natural audiences.

Publishers of larger magazines and paperback lines envision no such alternative, but hope the present system can be improved through a combination of government suasion and technology. The government has quietly sought to encourage local wholesalers to compete outside their territories, with some small success. As for technology, the number of computers in the industry is increasing. and Bantam's sales expert, Ron Bush, sees a day when every retail cash register will be wired into a central computer that would give distributors instant data on what is selling and where. But all present proposals are either tentative or utopian, and the disturbing truth is that for the forseeable future, the publishing industry will continue to be hampered by a distribution system that works well for only the very few.



Where The Boys Are

Organized crime's once substantial interest in newspaper and magazine distribution has waned markedly in recent years, but the mob isn't out of the business entirely. According to Federal and local investigators, Mafia captain Anthony (Tony Ducks) Corallo acquired a secret interest in the GI Dis-



richest and best of them, Screw. "Three guys came one day," recalls editor Al Goldstein. "One guy was always watching the doorway. Another said he had somebody he wanted me to meet. I got really excited. I grew up in Brooklyn as a Jewish faggot intellectual and these guys shot guns. Meeting them

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

Plaintiff,

71 Civ. 1211

-against-

MEMORANDUM

NEW YORK NEWS INC., et al.,

Defeddants.

FRANKEL, D.J.

The court is being favored in this case with a barrage of correspondence, all seemingly triggered by the court's explicit direction that the case should be prepared speedily for trial or some other form of final disposition. Much of the correspondence is bitter. Much of it reflects personal acrimony between counsel and regrettable refusals to cooperate in familiar ways for the effectuation of discovery and other appects of pretrial preparation.

Events of this nature drive all of us toward confrontations we should all desire to avoid. The court expects the members of our bar to cooperate in the discharge of their professional responsibilities. The court expects that documents will be exchanged, depositions delivered, and other courtesies shown in

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traditional fashion. If this expectation is disappointed, the court must consider measures of a disagreeable nature.

It is to be hoped that no such measures will need to be contemplated. If, despite this cautionary memorandum, the pattern of unseemly contention is extended, any counsel deeming himself or his client

memorandum, the pattern of unseemly contention
is extended, any counsel deeming himself or his client
aggrieved, should make a formal motion seeking the full measure
of any relief deemed to be appropriate. The court
will consider the full range of available sanctions
against counsel or client or both to remedy the unsatisfactory situation that has heretofore existed. Again,
the court expresses the hope that no measures of this

Dated, New York, New York

May 6, 1975

U.S.D.J.

nature will prove necessary.

DAILY MIRROR, INC.,

Plaintiff,

-against-

71 Civ. 1211 (MEF) NOTICE OF MOTION

I'W YORK NEWS, INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC.

defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of BARRETT G. KREISBERG, duly sworn to on May 5, 1975, and upon the Notice of Motion, dated May 5, 1975 and exhibits attached thereto as submitted by the defendant New York News, Inc. and upon all papers heretofore filed in the proceedings hereto, the defendant HENRY GARFINKLE (referred in the caption as HARRY GARFINKEL) will move this Court at the United States Courthouse, Foley Square, New York, N.Y. in Room 518 on the 26th day of May, 1975 at 10:00 o'clock in the forenoon on that day, or as soon thereafter as counsel can be heard for an Order and Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment dismissing the within action with prejudice as against HENRY GARFINKLE and for such other

and further relief as this Court may deem just and proper.

Dated: New York, N.Y. May 5, 1975

Yours, etc.

BARRETT G. KREISBERG
Attorney for Defendant
Henry Garfinkle
Office and Post Office Address
104 East 40th St.
New York, N.Y. 10016

TO:
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SAXE, BACON, BOLAN & MANLEY Attorneys for defendant American News Inc. 39 E. 68th St. New Y rk, N Y. 10021

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DAILY MIRROR, INC.,

Plaintiff,

71 Civ. 1211 (MEF)

-against-

AFFIDAVIT IN SUPPORT OF DEFENDANT HENRY GARFINKLE's (referred

NEW YORK NEWS, INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN

to as HARRY GARFINKEL MOTION FOR SUMMARY

JUDGMENT

NEWS COMPANY, INC., and ANCORP, INC.,

Defendants.

STATE OF NEW YORK) COUNTY OF NEW YORK) ss.:

BARRETT G. KREISBERG, being duly sworn, deposes and says:

I am an attorney-at-law duly admitted to practice in the Courts of the State of New York and in this Court and I am the attorney for HENRY GARFINKLE (referred to in the above caption as HARRY GARFINKEL.)

This affilavit is made in support of a motion by HENRY GARFINKLE for summary judgment dismissing the complaint pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure.

I have read the motion submitted on behalf of the New York News, Inc. for summary judgment and the affidavits and exhibits in connection therewith as well as the memorandum of law. The facts set worth in the affidavit of Mark D. Geraghty and the other affidavits apply equally to the defendant HENRY GARFINKLE and those papers are hereby numpted by the defendant HENRY GARFINKLE and should be read in connection with this motion.

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I point out to the Court that HENRY GARFINKLE is being sued here individually, however, any acts complained of by the plaintiff in its complaint would be as against the defendant, Ancorp National Services, Inc., of which HENRY GARFINKLE was Chairman of the Board, and not GARFINKLE in his individual capacity.

A reading of the depositions which are referred to in the affidavit of Mark D. Geraghty does not raise a scintella of evidence regarding HENRY GARFINKLE'S participation in any of the acts alleged in the plaintiff's complaint, nor, any acts in violation of the anti-trust laws as claimed by the plaintiff. It would appear that HENRY GARFINKLE is the subject of a meritless lawsuit as an individual and that there has been no conspiratorial evidence produced as amongst the defendants.

The plaintiff has had many years to produce evidence to support his claim as against HENRY GARFINKLE or any of the defendants - - it has failed to do so.

THEREFORE, it is respectfully requested that a summary judgment in favor of HENRY GARFINKLE should be granted and that this action be dismissed with prejudice and costs to HENRY GARFINALE.

Barrett G. Kreisberg

Sworn to before me this 5th day of May, 1975.

latery No. 05 total County

LETTER OF ROY, COHN ESO, ASKING FOR SOMMARY JUDGMENT DATED JA63 19 LAST ORM STEELET NEW YORK, NEW YORK ICE 21 THOMAS A BOLAN 1212 A 14 14 311 COUNSEL OHN GODFREY SAXE 1809 18131 ROOERS H-BACON . 1918 ROY M. COHN SCOTT E MANLET ADMITTED ILLIAUS AND INCIANA. MICHAEL ROSEN DANIEL J. DRISCOLL June 2, 1975 Honorable Marvin Frankel United States District Judge Southern District of New York United States Court House Foley Square New York, New York 10007 Re: Daily Mirror, Inc. /. New York News, Inc. et al. Dear Judge Frankel: At this time we respectfully request that we be allowed to join in the motion brought by the defendant New York News, Inc. for summary judgment dismissing the plaintiff's complaint pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure. Furthermore, we respectfully associate ourselves with the positions urged by Mark Geraghty, Esq. in his supplemental affidavit in support of defendant's motion for summary judgment, and in his affidavit in opp sition to plaintiff's motion for further discovery and other relief, both sworn to the 23rd day of May, 1975. Respectfully, SAXE, BACON, BOLAN & MANLEY, P.C. landilin Roy'M. Cohn sb

TELEGRAM OF PLAINTIFF'S ATTORNEY TO D.J.FRANKEL RE: ROY COHN LETTER TO D.J. FRANKEL OF JUNE 2, 1975
DATED 6/19/75

JA64

2-0534842170002 C6/19/75 1C8 IPMMTZZ CSP wastern union Mailgram

21 2126859346 MGM TOMT NEW YORK NY 06-19 1157P EST

R W FARRELL 67 PARK AVE NEW YORK NY 10016 ga Fre Shi hala

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2126859346 TDMT NEW YORK NY 126 06-19 1157P EST PMS HONORABLE MARVIN E FRANKEL, DLR UNITED STATES DISTRICT COURT FOLEY SQUARE NEW YORK NY 10007 IN RE; MIRROR VERSUS NEWS ET AL #71CIV1211

WE HAD BEEN SHOCKED TO JUST DISCOVER THAT OUR ADVERSARY ROY COMN WHOM WE HAD SOUGHT TO DISQUALIFY, HAD COMMUNICATED KITH YOU BY LETTER (JUNE 2 1975) FOR THE SUPREME RELIEF FOR SUMMARY JUDGEMENT FOR HIS CLIENT ANCORP AND WITHOUT BENIFIT OF ANY COPY TO US

THIS APPARENTLY WAS RECEIVED BY CHAMBERS WITH NEITHER REJECTION REBUKE NOR HOTICE TO US

A NOTICE OF MOTION FOR VACATUR OF THAT SUMMARY JUDGEMENT TO ROY COMN AND THE OTHERS WAS SERVED ON THEM JUNE 18 1975. RETURNABLE JULY 3 1975 WITHOUT OUR KN. LEDGE OF SUCH COMM JUNE 2 LETTER

TH BAID NOTICE OF MOTION WE HAVE REQUESTED YOUR REPLACEMENT

23158 EST

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NOTICE OF MOTION BY ROY COHN, ESQ. OR ANCORP DEFENDANTS (3) JA65
FILED JUNE 10, 1975

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JUN 1 0 1975

DAILY MIRROR, INC.,

Plaint .

-against-

71 Civ. 1211 (MEF)
NOTICE OF MOTION

NEW YORK NEWS, INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., AND ANCORP, INC.

------x

Defendants.

SIRS:

please Take Notice that upon the annexed affidavit of JOHN F. LANG, duly sworn to on May 14, 1975, and upon the Notice of Motion, dated May 14, 1975 and exhibits attached thereto as submitted by the defendant New York News, Inc. and upon all papers heretofore filed in the proceedings hereto, the defendant ANCORP, INC., will move this Court at the United States Courthouse, Foley Square, New York, N.Y. in Room 518 on the 26th day of May, 1975 at 10:00 o'clock in the forenoon on that day, or as soon thereafter as counsel can be heard for an Order and Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment dismissing the within action with prejudice as against ANCORP, INC., and for such other and further relief as this Court may deem just and proper.

Dated: New York, N.Y. May 14, 1975

TO:
ROBERT W. FARRELL, Esq.
Attorney for Plaintiff
DAILY MIRROR
67 Park Avenue
New York, New York

TOWNLEY, UPDIKE, CARTER & RODGERS
Attorneys for Defendant
NEW YORK NEWS, INC.
220 East 42nd Street
New York, New York 10017

Yours, etg.

JOHN F. LANG
SAXÉ, BACON, BOLAN & MANLEY
Attorneys for Defendant
ANCORP INC
Office and Post Office
39 East 68th Street
New York, N.Y. 10021

BARRETT G. KREISBERG
Attorney for Defendant
HARRY GARFINKEL
104 East 40th Street
New York, New York 10016

delitiont

DAILY MIRROR, INC.,

Plaintiff,

-against-

NEW YORK NEWS, INC., HARRY GARFINKEL, UNION NEWS COMPANY, INC., AMERICAN NEWS COMAPNY, INC., AND ANCORP, INC.,

Defendants.

71 CIV. 1211 (MEF)

AFFIDAVIT IN SUPPORT OF DEFENDANT ANCORP INC., MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JOHN F. LANG, being duly sworn deposes and says:

I am an attorney-at-law duly admitted to practice in the Courts of the State of New York and in this Court and I am the attorney for ANCORP INC.

This affidavit is made in support of a motion by ANCORP INC. for summary judgment dismissing the complaint pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure.

I have read the motion submitted on behalf of the New York News, Inc., for summary judgment and the affidavits and exhibits in connection therewith as well as the memorandum of law. The facts set forth in the affidavit of Mark D. Geraghty and the other affidavits apply equally to the defendant ANCORP INC. and should be read in connection with this motion.

A reading of the depositions which are referred to in the affidavit of Mark D. Geraghty does not raise a scintella of evidence regarding ANCORP INC. participation in any of the acts alleged in the plaintiff's complaint, nor, any acts in violation of the anti-trust laws as claimed by the plaintiff. It would appear that ANCORP INC. is the subject of a meritless lawsuit and that there has been no conspiratorial evidence produced as amongst the defendants.

The plaintiff has had many years to produce evidence to support its claim as against ANCORP INC. or any of the defendants and it has failed to do so.

THEREFORE, it is respectfully requested that summary judgment in favor of ANCORP INC. should be granted and that this action be dismissed with prejudice and costs to ANCORP INC.

JOHN V. LANG

Sworn to before me this 14th day of May, 1975

NOTARY PUBLIC

No any PL

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

AFFIDAVIT OF SERVICE BY MAIL

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Theresa Kurk

THERESA KURK, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at Edison, New Jersey. That on the 14th day of May, 1975 deponent served the within Notice of Motion and Affidavit

upon:

ROBERT W. FARRELL, Esq. Attorney for Plaintiff DAILY MIRROR 67 Park Avenue New York, New York

TOWNLEY, UPDIKE, CARTER & RODGERS Attorneys for Defendant
NEW YORK NEWS, INC.
220 East 42nd Street
New York, New York 10017

BARRETT G. KREISBERG
Attorney for Defendant
HARRY GARFINKEL
104 East 40th Street
New York, New York 10016

the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly add: sed wrapper, in - a post office - official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me,

1 1 and

this 14th day of May, 1975.

ANN TURCHIANO
Notary Public State of New York
No. 5220 27210

Ouslified in Hew York County Commission Expires March 30, 1977

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APPLICATION OF PLAINTIFF FOR DJ.FRANKELS' RECUSANCE (filed May 29th,19

SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

Plaintiff

-against-

NEW YORK NEWS, INC., HARRY (HENRY)
GARFINKLE, UNION NEWS COMPANY, INC.,
AMERICAN NEWS COMPANY, INC., and
ANCORP, INC.,

APPLICATION FOR WITHDRAWAL OF PRESIDING DISTRICT JUDGE PURSUANT TO SEC.144, and 455 (as amended) Title 28 USC.

71 CIV. 1211

Defendants

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

ROBERT W.FARRELL, being duly sworn deposes and says:

That I am the attorney for the plaintiff herein, a newspaper'publisher and its chief executive officer.

As such, I am beholden to numerous public stockholders thereof. I make this affidavit in support of plaintiff's application for the withdrawal of Hon. Marvin E. Frankel, District Judge, in charge herein.

The application is made essentially , as a matter of high conscience, and as provided for in Sections 144 and 455 (as recently amended) Title 28 USC.

I am making this affidavit, immediately after my telephone call to Chambers with a request, that the problems and matters now in critical juncture herein, be treated at Chambers, with adversary present if need be, either by the Judge's Law Assistant or the Judge himself.

Both requests were promptly refused.

Under the circumstances herein, they burdens of the plain-i
tiff having grown, we have found ourselves constrained at last, to
file the present affidavit.

I make this application, ce rtifying also, as the attorney of record herein, to the good faith thereof.

It is to be recalled that Judge Frankel received this case from three successive prior judges, on or about March 18th, 1975.

of conduct of this District Judge, since he assumed charge, has been personally hostile to plaintiff's cause, and that plaintiff cannot receive, at his hands, a fair consideration of the various motions, now pending or awaiting submission of papers before him, including one by plaintiff for further discoveries, and defendants' motion for summary judgment.

Nor does deponent feel that plaintiff can receive a fair trial of the issues herein from the present District Judge Marvin E.Frankel.

Your deponent feels that plaintiff is being pressed, and forced to meet various "deadlines" without proper or just or due extensive attention by the Judge to adversaries as the/cause for the delays,

the Judge is complaining of.

That the Judge has done so, over the plaintiffs definite objections; and in such respect, he has been felt by us, to be over-harsh and oppessive and arbitrary; and that, in the treatment of

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these "deadline "considerations, the Court has been most cursory" with us, in the presence of these important issues affecting public good.

Plaintiff sizo feels that it will not receive a fair and reasonable consideration of our particular applications for further discovery of defendant's witnesses in this light, and which witnesses evidence I regard as essential to our preparation for a fair trial.

We have felt that the Judge has directed his expressed anger and impatience at us instead of at the defendants and at adversary counsel, where any judicial anger, truly could be justified, as the record itself will show.

- 1. In hostility to us, Judge Frankel did pass over and overrule a determination made in our favor affecting important discovery issues, by a coordinate District Judge, and by which normally, he should be governed.
- 2. That the Judge has made us feel that he entertains an indulgence of adversary, representing defendant, New York News Inc., while treating deponent with lesser manner and consideration.
- 3. That Judge Frankel has made accusations of delay, as his essential consideration for a series of his adverse dispositions material to plaintiffs' prosecution of its cause, and then has turned that issue against plaintiff, when the entire history of the case since that issue against plaintiff, when the entire history of the case since 1973, is one of our constant complaint, that adversaries have put us to successive delays; and that such delays have been, throughout the defendants' responsibilities.

The records will show that we have constantly and currently recorded our objections in the interest of expediting our case.

- 4. Deponent calls attention to the fact that when we sent a letter, dated April 26th, 1975, reciting that history, the Court directed an angry memorandum at both sides, although said letter brought no contradiction or dispute. Deponent felt that, that memorandum was unfair to us.
- 5. That repeatedly, the Judge has acceded to granting permission for a procedural course, but with advance assurance, however, that same probably would be denied, and thus making us feel a lack of confidence in due judicial process.
- 6. That, after both sides were asked to assist in focusing the triable issues for the Trial Judge, through the use of the pretrial memorandum method, it was suggested by our adversary that the Judge might, instead, receive from adversary a motion for summary judgment against us instead.

Suddenly, we found ourselves confronted with such optional motion, as a matter of great urgency, with deadlines forcing us, for said motion, answering papers and reply, with the threats that such deadlines must be met, directed at us, while extensions were being granted to our adversary.

- tain essential procedures, needed by us by way of discovery for the effective preparation for the trial of these issues, only to leave said direction uncomplied with, while forcing the plaintiff unjustly to summary judgment or trial without benefit thereof. (Trial now set for June 9th, 1975.)
 - 8. That, after having made the motion for summary judgment

Judge that said motion would probably not be granted, and after the Judge that said motion would probably not be granted, and after the defendant's own papers as served, disclosed, that said motion should be denied, in any event, by its own wording in discount thereof; be denied, in any event, by its own wording in discount thereof; severtheless, now we are being compelled to vigorously proceed there with, instead of using the alleged shortage of time for necessary. With, instead of using the alleged shortage of time for necessary.

- g. That the Judge, instead of reasonably postponing the trial, is allowing these matters to go forward in haste, to our greatingury.
- 10. That plaintiff feels that all this amounts to Judge's oppressing plaintiff with deadline dates at expense of essential preparation, and that he is leading the plaintiff into a state of default, with a dismissal of its action indefendants; favor, to follow

That, by reason of the foregoing, and its cumulations, the plaintiff feels and is convinced that he cannot get a fair disposition of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction of the present motions and of the trial in prospect from Distriction Distriction of the present motions and of the trial in prospect from Distriction District

WHEREFORE, plaintiff asks that Judge Frankel withdraw, in high conscience, so that the case may proceed expiditiously with the confidence of these plaintiff parties and that a full and fair trial of these issues may be had.

ROBERT W. FARRELI

Sworn to before me this 29th day of May 1975.

RAYN State of New York

Qualified in Nassau County 26

CHITTO STATES DISTRICT OF LIN YORK

DATLY MIRROR INC.

Plaintiff.

71 Civ. 1211

VECTDVATA

· against: ·

MEW YORK NIAS ANCORP, INC., et al.

Defendants.

COUNTY OF WELL YORK)

P.C., and submit this efficient on ochalf of myself and the strict number of the firm ley 1. Cohe, Pag.

We are general counsel for the up National Services The.

and counsel for them in the instant proceeding. We were never

served with the application requesting Judge Frankel to recuse

himself in this natter, and obtained a copy from another counsel

who then had obtained it from the Court.

without going into any further details we respectfully submit that this latest application is completely baseless, to the point that, combined with all of the other similar applications and manoeuvers of plaintiff over the years, it constitutes a platant abuse of process, which has substantially prejudiced the lefendant, Ancorp National Services, Inc., through the expenditure of funds and the time of personnel during the course of a litigation which plain. If has no real intention of pursuing in any vay

other than through nearingless har issuent rather clan jurian issue on the merits.

recuse must be procedurally rejected, as the parties were nover served, and it has not been properly made, and on the further bround that it is totally and completely lacking in perit. To renew our submitted request that this application be dismissed, in the interests of justice.

THOMAS A. BOLAN

Sworn to before me this 6th day of June, 1975

Calety S

Letter from attorney KREISBERG for Deft.Garfinkle and his affidavit dated 6/4/75 Re; recusance application

BARRETT G. KREISBERG COUNSELOR AT LAW 104 EAST 40TH STREET NEW YORK, N.Y. 10016

White Plain,

June 4, 1975

Honorable Marvin E. Frankel United States District Judge United States District Court Foley Square New York, N.Y. 10007

Re: Daily Mirror Inc. vs. New York News, et al., 71 Civ. 1211

Dear Judge Frankel:

Enclosed you will find an affidavit in connection with the plaintiff's application pursuant to Section 144 and 445 titled 28 USC on behalf of the defendant Henry Garfinkle.

It appears that the plaintiff has failed to file any answers in connection with the summary judgment motions which were returnable before this Court on May 27, 1975, and that the plaintiff is in default on said motion although the Court granted extensions of time as referred to in your letter of June 2, 1975 addressed to all counsel.

The defendants' motions fully set forth all of the facts relating to the subject matter of this case and indicate that there are issues to be tried by the Court. The defendant has had close to 4 years to obtain all evidence available to substantiate its point of view. The fact that the plaintiff has not put in any answer, or, raised any issue other than its diliatory motions seeking further examination and other relief, would indicate that the plaintiff has no evidence within which to respond to the moving papers on the summary judgment motion.

The undersigned stands ready to abide by Your Honor's decision on any of the matters currently before you.

Respectfully yours,

(39)

Bar ett G. Kreisberg

BGK:ns

cc: to all counse! with affidavit

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

Plaintiff,

"For Referral to Judge Frankel After Docketing"

Yagainst-Mararrayyukuu ka masaa ka marar a g

71 Civ. 1211 (MEF)

NEW YORK NEWS INC., HARRY GARFINKLE, UNION NEWS COMPANY, INC., AMERICAN INC., NEWS COMPANY, INC., and ANCORP, INC.,

AFFIDAVIT

Defendants.

COUNTY OF WESTCHESTER)

I am an attorney admitted to practice in the United States
District Courts for the Southern District of New York and represent
the defendent Henry Carfinkle (referred to in the caption as "Harry").

I make this affirmation with regard to an application made by
Robert W. Yarrell, the attorney for the plaintiff, pursuant to
Section 144 and 445 as amended Title 28-USC. I wish to point out
to the Court Last the affidavit of Robert W. Farrell dated May 29,
1975 was never served on your deponent, nor was I even advised by
the plaintiff's counsel that such application was made to the Court.
The papers were picked up by my office from the office of Townley,
Updike, Carter & Rodgers, Esqs. after I had been advised that they
had received the papers from the Court on June 5, 1975.

The affidavit presented by Mr. Farrell on the eve of the trial of this action, and at a time when he is in default in submitting his papers in opposition to a motion for summary judgment made by the defendants in this action, appears to be another of his dilatory tactics to prevent the orderly disposition of this action. The correspondence between the Court and the attorneys and in the affidavits heratofor submitted fully set forth what has transpired in this case.

If the plaintiff's attorney were serious about prosecuting this action, he would have presented opposing affidavits on the motion for summary judgment, or, at the very least, proceeded according to the rules of civil procedure by requesting in his answering affidavits further depositions (which as has been pointed out in various affidavits before this Court are entirely unnecessary.)

The only time the plaintiff seems to take any action at all is when he faces imminent dispositions of his case and when this Court advises him that he can no longer stall any further. The Court, it appears, has, at plaintiff's request, extended him courtesies on a number of occasions, but, the plaintiff has still failed to respond in any manner. The Court has even postponed the date of the trial from June 9th to June 16th.

Plaintiff's corrent actions are consistent with his past actions of failing to properly conform with other applicable rules of the

JA81

Court and to seek to place blame at other peoples' doorstep.

Barrett G. Kreisberg

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Sworn to before me this 4th day of June, 1975.

Notary Public

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UNITED STATES COURTHOUSE

NEW YORK, N. Y. 10007

CHAMBERS OF JUDGE MARVIN E. FRANKEL June 2, 1975

MEMORANDUM OF D.J.FRANKEL DATED JUNE 2nd,1975 in relation to recusance.

Robert W Far

Robert W. Farrell, Esq. 67 Park Avenue New York N.Y. 10016

Townley, Updike, Carter & Rodgers, Esqs.

220 East 42nd Street

New York N.Y. 10017

Attn: Mark D. Geraghty, Esq.

Saxe, Bacon, Bolan & Manley, Esqs. 39 East 68th Street
New York N.Y. 10021

Barrett Kreisberg, Esq. 104 East 40th Street New York N.Y. 10016

Re: Daily Mirror Inc. v. New York News, et al.,
71 Civ. 1211

Gentlemen:

As you know, the plaintiff, after seeking extensions of time, has filed no response to the pending motion for summary judgment. I am advised by my law clerk, Mr. William J. Perlstein, that Mr. Farrell stated last week that he had filed papers (at 3:30 p.m. on May 29), seeking at this late date to have me recuse myself on grounds that are not yet apparent to me. Those papers, as this is dictated (at 2:30 p.m. on June 2, 1975), appear not to have been filed. The result is a state of maximum uncertainty and potential confusion for all concerned.

In these circumstances, the problem of prediction and scheduling for both court and counsel is exceedingly difficult. It may well be that the complaint is soon to be dismissed on the granting of summary judgment against the defaulting plaintiff. It is conceivable that Mr. Farrell has grounds of which I am wholly unaware

for effectively demanding my withdrawal. Having in mind that this is a case under the emergency program recently inaugurated by the court for cases of such ancient vintage, I shall plan to proceed with the utmost possible speed and fairness in this somewhat troublesome situation. You may be certain that I shall be turning to the motion for summary judgment within the next day or two. I shall, of course, give full ttention to any motion by Mr. Farrell if and when he succeeds in submitting it. In the meantime, it seems only fair to counsel for defendants to announce that the trial date, long ago fixed at June 9, 1975, must now be postponed to June 16, 1975, again subject to such eventualities as may hereafter appear.

Very truly yours,

Marvin E. Frankel

DECISION OF D.J. FRANKEL DATED JUNE 9, 1975 GRANTING SUMMARY JA84
JUDGMENT BY DEFAULT ETC.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

Plaintiff.

-against-

NEW YORK NEWS INC., HARRY
GAPTINKLE, UNION NEWS COMPANY,
INC., AMERICAN NEWS COMPANY, INC.,
and ANCORP, INC.,

Defendants.

71 Civ. 1211

MEMORANDUM

FRANKEL, D.J.

Plaintiff corporation, which commenced publication on January 4, 1971, of a tabloid new paper, charged that defendants - a highly successful competitor, three companies engaged in the distribution of newspapers and other publications, and an individual principal of these companies - had violated the antitrust laws by conspiring from January 1971 to restrain and monopolize commerce in the dissemination of news and newspapers. Defendants' objects, plaintiff a leged, included in general the suppression of competition, specifically the elimination of plaintiff as a competitor, and the concerted refusal to distribute plaintiff's newspaper to newsstands and other distribution points controlled or serviced by

Plaintiff's paper, called "The Daily Mirror," was unrelated to a once famous newspaper, "The New York Mirror," which ceased publication in 1963.

defendants. With the specification of further details not now necessary to recount, plaintiff charged wrongs under the state as well as the federal antitrust statutes plus a common-law count for conspiratorial and malicious injury. Damages amounting to some \$90,000,000 were sought, together with costs and attorneys' fees.

While the complaint seemed to propose questions of possible moment, it was prosecuted only occasionally and slowly. Within months after the start of the case, plaintiff's chief executive officer was substituted as counsel in place of the original attorney. While the action had been brought a scant two months after plaintiff embarked on its risky venture in competition with two of the world's most powerful newspapers, plaintiff did nothing to press it for over two years, having in the meantime ceased publication altogether about a year after beginning its business and this lawsuit. When there came a threat of dismissal for want of prosecution, in the summer and fall of 1973, plaintiff took some depositions. About a year later there were some interrogatories. Sporadic motions were made along the way. Defendants' interrogatories were answered only under a threat of dismissal as the alternative. The answers finally made were notable for their brevity and asserted lack of pertinent information.

Without recounting every procedural detail, it suffices for now to recall that on March 14, 1975, this ancient case was reassigned to me under this court's "Plan for the Reallocation and Disposition of Three-Year-Old Civil Cases." The plan, as bench and bar were made vividly to understand, was designed to see that cases like this one were given the highest possible priority so that we could move closer to the ideal of current dockets and reasonably prompt trials for litigants who want them. The rules to accomplish this were thoroughly publicized. These provided, inter alia:

"By April 1, 1975, each judge shall notify counsel in each of the 'old cases' then on his calendar * * * of a pretrial conference no later than May 15, 1975. At such conferences, all the cases will be set for trial during the 6-weel: 'crash' period commencing June 2, 1975 and ending July 11, 1975, in chronological sequence as nearly as possible, each trial to commence upon conclusion of the trial of a specified preceding case. Claims of conflicting assignments in other courts, vacation schedules or personal commitments shall not be accepted as an excuse except on a showing of extraordinary hardship. Counsel shall be notified that if the; are not ready for trial when called, their cases shall be subject to dismissal for want of prosecution or to striking of their pleadings and entry of default."

In accordance with the rules, this case was called for a pretrial conference on March 26, 1975. Counsel were reminded that it must be readied for trial with minimum delay. Stringent limits were ordered on any further

discovery. It was pointed out that desired witnesses who have not been deposed during all these years may be subpoenaed for the trial, a course less wasteful of time in the end than allowing the case to drag on in its accustomed way. Counsel were advised on March 26 to be ready for trial on the morning of June 9, 1975.

Defendants urged, however, that they be given an opportunity to move for summary judgment. In informal discussions, I pointed out the seeming remoteness of the possibility that any such motion could succeed, moved by fairly obvious thoughts:

First, that a supposedly large antitrust case is among the least likely candidates for summary judgment.

Second, that the motion should better have been made earlier.

In seemingly cogent answer to both points, counsel brought to my attention that there was no pretrial order in the case; that a summary judgment motion, even if denied, could serve to crystallize the issues to be tried; and that this antitrust case, however large and complex a matter the complaint might have seemed to portend, was actually of exceedingly modest proportions in terms of what plaintiff might hope to present in the way of evidentiary material.

Adhering to the prediction that it could not succeed, and reemphasizing that the date of June 9 for trial would still stand, I agreed that the motion should be brought, duly opposed, and decided. A schedule for submissions was made. One or two brief adjournments were allowed. The motion papers - thorough and powerful, as will appear - were duly served and filed at the beginning of last month.

In the meantime, pursuing a course that does not appear to be new for him in this case, plaintiff's counsel continued small discovery efforts, wrote long and often vitriolic letters to me when his adversaries acted in ways he deemed unsuitable, and otherwise did nothing to advance his case. Responding sometimes without excessive patience, I demanded an end to the epistolary practice; instructed plaintiff's counsel to serve motion papers if he believed there were grounds for making motions; but reminded him that in the present posture the time for making all but the most indispensable of motions had largely run.

In light of, or perhaps despite that instruction,

Mr. Farrell moved on May 19 for an order allowing further

discovery and p duction of documents, permitting plaintiff

to reargue for the disqualification of one of the

attorneys in the case, and granting a further delay in this

ancient case. That motion was made returnable May 27,

the same return date carried by the summary judgment motion.² On the afternoon of May 27, plaintiff's counsel was contacted by my chambers when it became apparent that no papers had been filed in opposition to the summary judgment motion. Plaintiff's counsel asked for a week's extension, and was given until May 30.

On Thursday afternoon, May 29, 1975, plaintiff's counsel reported by telephone to my law clerk, Mr. William J. Perlstein, that he had decided not to file any answer whatever to the motion for summary judgment but was instead filing an application in the form of an affidavit seeking my withdrawal from the case. Mr. Farrell stated, and was later to reiterate, that this paper was being filed that day. When we sought in the Clerk's office to obtain one paper, it was not there. It was not served then or thereafter upon opposing counsel. When this situation was called to Mr. Farrell's attention at the beginning of the following week and he was asked to file another copy, he balked initially unless the Clerk would docket it as naving been filed on Thursday, May 29. Finally, upon my order, the Clerk accepted and docketed the paper, with the understanding that the claim of earlier filing would not thereby be deemed to be foreclosed. As it turns out, the date of

-6-

The eventual disposition herein, dismissing plaintiff's complaint, embraces of course a denial of the grossly tardy and otherwise unmeritorious motion of plaintiff.

filing is not important in any event. But it is perhaps pertinent to note that defense counsel swear they have not, at least until now, been served by plaintiff with the application seeking my recusal.

Coming at last to the application, I am compelled to find it insufficient for any purpose - either to accomplish my relief from the case or to delay further a decision in defendants' favor on their motion for summary judgment. As to the proposal that I recuse myself, Mr. Farrell swears it is made "in good faith," and I have no reason to question that. But it remains ineffectual. Mr. Farrell expresses his "belief and conviction" that I am "personally hostile to plaintiff's cause"; that he is being pressed to meet deadlines "without proper or just or due attention by the Judge to adversaries as the extensive cause for the delays the Judge is complaining of"; that I have been "over-harsh and oppressive and arbitrary" as well as "cursory"; that I have directed "anger" at plaintiff when it should be aimed at defendants; that he is convinced, in sum, "that he cannot get a fair disposition of the present motions and of the trial" before me.

I am sorry, of course, that Mr. Farrell perceives things like anger and personal hostility against himself and/or his client. I cannot pretend to be cheered by learning that he feels this way. But the duties of the office are plain and Mr. Farrell's complaints are plainly

sleeveless. So far as I am aware, I have never known Mr.

Farrell or his client until this case. Having seen him in person a single time, I sense for myself none of the hostile emotions he detects. Indeed, I have not known Mr. Farrell or this lawsuit long enough to have feelings about either that could fairly be dubbed "emotional." What is more vital in law is the obvious fact that his inferences flow only from my rulings and conduct as the judge assigned to this case. I think it clear that the assertions he presents fail on their face to make out any such "bias or prejudice" as could require - or entitle - me to remove myself from the case at this late date - or, indeed, at any time.

In order to reach and consider this question (including the location of the paper presenting it), I ordered the trial adjourned from sune 9 to June 16, 1975. But it is time now to deal with the pending motion. And it develops that there will be no occasion to have a trial after all.

unopposed, the papers supporting the motion make a careful and compelling case for dismissal of the complaint.

There are detailed and specific affidavits by the people with knowledge denying the acts of conspiracy and other wrongdoing conclusorily charged in the complaint. Beyond that, defendants supply a highly persuasive account of facts which, even as plaintiff alleged them, presented a dubious

been noted, plaintiff charged a conspiracy beginning with the birth of its short-lived enterprise. It appears to be undisputed that plaintiff's newspaper was carried upon the allegedly offending newsstands during the first week or so of its publication. Contrary to the contention that this resulted from an oddly neglectful conspiracy which lapsed into forgetfulness for a week, defendants show that the altered situation was caused by plaintiff's change to a new wholesaler which offered the newspaper a: a price increased beyond what defendant Ancorp deemed justified. It is sworn persuasively that defendant Daily News had nothing whatever to do with this business decision.

Beyond the detailed accounts supplied in their own affidavits, defendants review what they have learned from their own discovery efforts. They show the enormous probability that plaintiff could make no approach to a prima facie case at trial. Responding to interrogatories, plaintiff has acknowledged its entire lack of evidence to prove its charges. In a case this old it is much too late to try to resist summary judgment by saying plaintiff might be able to supply the missing evidence by calling upon defendants themselves. Plaintiff has had four years

to make such calls and a court available to enforce them if resisted. The evident fact is that the discovery plaintiff has seen fit to undertake has not reinforced the gossamer of speculation and hope on which the action seems to have been rested from its inception.

The relevant learning concerning motions for summary judgment is clear and familiar. Defendants have done more than plaintiff, defaulting, is entitled to Beyond confronting a plaintiff who does not deign to respond, defendants have shown that the absence of response reflects an overwhelming probability that plaintiff has nothing to respond with. There is not in any pertinent sense any genuine issue as to any material fact. Defendants are entitled to the judgment they seek.

In sum, the motion for summary judgment is granted. Alternatively, or perhaps additionally, the circumstances would warrant dismissal of this ancient and evidently unmeritorious case for failure to prosecute. Plaintiff has managed to avoid utterly the steps ordered to ready the case for trial, scheduled over two months ago to begin today. Apart from more general rules and principles, the plaintiff is in default under this court's above-quoted Plan for cases as old and neglected as this.

The Clerk of the Court will enter judgment dismissing the case with prejudice and with costs to defendants.

It is so ordered.

W. S. U. J.

Dated, New York, New York

June 9, 1975

U.S.D.J.

LETTER FROM GERAGHTY, att'y FOR "NEWS" DATED JUNE 6th, 1975 AND AFFIDAVIT RE: "recusance" TOWNLEY, UPDIKE, CARTER & RODGERS IDMAD P "REDWAY
DINA MATER
DWAND M. MAREP
LENAM P. MINDMAN, JP.
HDMLW L. HUDMES
HILD D. PARSI 220 EAST FORTY - SECOND STREET ONALD S. DATIFLE STUAPT N. UPDIKE **NEW YORK, N. Y. 10017** J. HOWARD CARTER JAMES W. RODGERS CHAPATA PENER
HILIP B. CLICA
LARY D. GERAGHTY
JOHN D. CALONI
HICHARD C. AULLEN, JR.
HOSEPH F. KELLY, JR. CCUNSEL TELEPHONE JOSEPH F. NELLY, JR.

WILLIAM A. A.PER
PANDOLPH AMENGUAL
MICHAEL S. SELDHLAVEK
FREGERICK D. BERKON
JUSSE H. BRENNER
JOHN M. CALLADY
RICHARD C. CONOVER
DOJIGLAS C. FAIRHURST
PETER C. GO'ULD
SPENCER C. HUNT
PHILIP L. KIPSTEIN
JAMES A. LEADER
TERENCE J. LYNCH
ROBERT C. MANGONE
SLADE R METCALF
FREDERIC R. MIDLIN
JOHN C. SCANNELL
RAYMOND J. SOFFIENTINI
EOWAPD E. VASSALLO
ROGER E. WILLIAMS
CANER A YEOMANS (212) MURPAY HILL 2-4567 CABLE: TUCARRO TELEX: NO. 12-7815 June 6, 1975 LE A. YEDMANS Honorable Marvin E. Frankel United States District Court Judge Urited States District Court for the Southern District of New York United States Court House New York, New York 10007 Re: Daily Mirror, Inc. v. New York News Inc., et al. Dear Judge Frankel: The Court has invited counsel for defendants to submit comments with respect to the application made by plaintiff pur-Suant to Title 28 U.S.C. §144 and Title 28 U.S.C. §455, asking the Court to recuse itself and with respect to the pending motion for summary judgment in this action. The plaintiff has never served its application and the supporting affidavit on this firm but we have been supplied a copy of these papers by the Court. We have reviewed the affidavit of Robert W. Farrell, sworn to May 29, 1975, and filed in support of the above referred to application. A reading of Mr. Farrell's affidavit shows that plaintiff's application is legally insufficient and that it is not made in good faith. It is apparent that plaintiff has filed the pending application solely for the purpose of delaying the final disposition of this action. Plaintiff has not demonstrated the existence of any grounds which should cause you to recuse yourself. I am submitting an affidavit with that letter which deals with certain parts of Mr. Farrell's affidavit.

Defendant New York News Inc. will not submit any further papers in support of its pending motion for summary judgment. We consider that motion fully submitted. We urge that the motion must be granted in the absence of some showing by plaintiff which has not as yet been made.

It appears that plaintiff's counsel has seized upon an argument that he requires additional discovery and, using that argument as a base, has chosen to ignore the pending motion for summary judgment and to instead embark on extraneous motion practice.

Rule 56 of the Federal Rules of Civil Procedure provides a procedure by which a party opposing a motion for summary judgment can, upon a proper showing, seek additional discovery for the purpose of demonstrating the existence of triable issues of fact.

As I have explained in my accompanying affidavit, plaintiff's counsel was aware of this procedure. If plaintiff's counsel had sought additional discovery pursuant to the provisions of Rule 56, this action could have proceeded in an orderly manner. Plaintiff's failure to follow this procedure is resulting in the expenditure of needless time and effort in dealing with unnecessary motion practice which is plainly calculated to impede the progress of this lawsuit.

We respectfully submit that plaintiff is ignoring his opportunity to seek discovery within the context of Rule 56 because its counsel knows it cannot show justification for more discovery.

If the Court is, for any reason, inclined to give plaintiff another opportunity to show that triable issues exist in this action which would defeat defendants' motion, we respectfully request that plaintiff be advised that it will only be entitled to seek further discovery in the manner provided by Rule 56.

> Respectfully, ha a when

Mark D. Geraghty

MDG/cs Enclosure

cc: All Counsel (with encl.)

UNITED STATES DISTRICT OF W YORK

"For Referral to Judge Frankel After Docketing"

DAILY MIRROR, INC.,

71 Civ. 1221 (MEF)

Plaintiff,

AFFIDAVIT FILED IN CONNECTION WITH PLAIN-TIFF'S APPLICATION PURSUANT TO TITLE 28 USC §§ 144 and 455

- against -

NEW YORK NEWS INC., HARRY GARFINKLE, : UNION NEWS COMPANY, INC., AMERICAN NEWS COMPANY, INC., and ANCORP, INC., :

Defendants.

STATE OF NEW YORK)

COUNTY OF NEW YORK)

MARK D. GERAGHTY, being duly sworn, deposes and says:

- 1. I am an attorney admitted to practice in the United States District Court for the Southern District of New York and I am a member of the firm of Townley, Updike, Carter & Rodgers, attorneys for the defendant New York News Inc. in the above-entitled action. I make this affidavit in connection with the application of plaintiff pursuant to Title 28 USC §§ 144 and 455 seeking to compel Judge Frankel to recuse in this action.
- 2. My purpose in making and filing this affidavit is to submit relevant facts which may have a bearing on plaintiff's application seeking to have this Court recuse itself.
 - 3. With respect to Mr. Farrell's charges of personal

summary judgment. In point of fact, we finally obtained the transcripts of testimony on Friday, May 2, 1975 (despite a lack of cooperation by Mr. Farrell) and worked over the weekend to complete our motion papers by May 5, 1975, the day on which they were required to be filed.

- second extension referred to above, I asked the Court for two weeks additional time because of a contemplated business trip to Europe. The two-week extension was not granted with the result that I had to make a curtailed trip to Europe (completing my travel in less than three days) and was required to work two full weekends because of the short extension which was granted by the Court.
- 7. The foregoing is the entire history of my requests for relief to Judge Frankel since the pre-trial conference.
- 8. In his affidavit Mr. Farrell appears to complain that he is not being given the opportunity to conduct further discovery so that he can be prepared for the trial in this action
- 9. Mr. Farrell claims that Judge Frankel has ignored ruling by another Judge of this Court granting plaintiff some undefined discovery. The only ruling that has been made in this action with respect to discovery (other than rulings made by Judge Frankel) is the decision of Judge Carter made on November 1974 which flatly and unequivocally denied a motion made by the

plaintiff in April, 1974 for leave to take further depositions in this action - which depositions Judge Frankel finally ordered taken in connection with the pending motion for summary judgment. We are aware of no other ruling either in writing or oral to which Mr. Farrell could be referring.

- asked t continue depositions of witnesses already called in this action without making any showing that such further discovery would demonstrate the viability of its claims. Plaintiff has made several motions to continue depositions but never set forth any grounds to demonstrate a valid reason for the relief sought.
- 11. For more than one year defendants have taken the position that plaintiff had an adequate opportunity for discovery but failed to develop any admissible evidence and that there was no real prospect that it would do so in further discovery proceedings.
- 12. With the making of defendants' motion for summary judgment plaintiff has now been faced with the reality that in order to obtain further discovery it must make an adequate showing that such discovery will be meaningful and productive. In the face of this reality plaintiff had chosen to ignore both the opportunity and the obligation imposed by Rule 56.
- 13. Rather than submit answering papers to defendants' motion for summary judgment on May 19, 1975 pursuant to this

Court's briefing schedule, plaintiff ignored its responsibility to answer and instead on May 27, 1975 made an independent motion, in the old mold, for additional discovery. Despite plaintiff's total disregard of the Court's briefing schedule, plaintiff was given the opportunity to file its opposing papers to the motion for summary judgment by Friday, May 30, 1975, almost two weeks after they were due. Indeed, the Court's consideration for plaintiff created a hardship on this office which was directed by the Court to prepare reply papers over the weekend and so file them by Monday, June 2, 1975. At the time we were advised that plaintiff had received additional time to file its opposing papers, we were also advised by Chambers that Mr. Farrell advised that he would file such papers within the period fixed by the Court. As a result, a planned appointment in California was cancelled, associates altered weekend schedules and secretarial help was arranged, all, in the last analysis, to accommodate plaintiff's counsel.

- 14. Then, instead of filing opposing papers plaintiff informed the Court that it was making an application for Judge Frankel to recuse himself, and therefore, was not going to submit answering papers. All of this was done in complete disregard of other counsel and we did not learn of plaintiff's change of heart until Friday, May 30, 1975.
- 15. At this juncture it is obvious what underlies plaintiff's action. Realizing that it is unable to demonstrate

triable issues of fact, plaintiff is attempting to delay final disposition of this lawsuit by any means. It is obvious that when plaintiff's counsel sensed that the Court was going to decide defendants' motion for surrary judgment, rather than plaintiff's intervening and inappropriate motion for additional discovery, plaintiff decided to charge that the Court was acting in a prejudicial manner against plaintiff's interests instead of dealing with the substantive issues in the lawsuit.

- 16. Plaintiff undoubtedly was aware of the procedure under Rule 56 which is available to a party opposing a motion for summary judgment when such party can adequately demonstrate the need for additional discovery to establish triable issues of fact.
- 17. In this connection I think it is highly significa to relate to the Court a conversation which I had with William Klein, Esq., an associate of Mr. Farrell, in my office on May 8, 1975, just three days after the service and filing of our motion for summary judgment.
- ostensibly for the purpose of obtaining a second copy of our motion papers for summary judgment. He initially spoke with my associate, Frederick D. Berkon, Esq., but then asked to speak with me.
- 19. Incredibly, in the course of our conversation he asked me to withdraw our motion for summary judgment which had

just been filed. Declining to do so, I asked Mr. Klein if he and Mr. Farrell had read the motion papers. Mr. Klein said they had not although he found them "physiologically impressive". He then asked me to agree with him on a schedule of additional discovery. Again I refused, pointing out to Mr. Klein that the Court had just denied Mr. Farrell additional discovery and if he thought he were entitled to additional discovery he could make such a request under Rule 56 in connection with his opposition to our motion for summary judgment and that if he needed more time to deal with the motion for summary judgment we would not oppose such an application. Thus, plaintiff was fully aware on May 8 of the appropriate procedural avenue that was then available to it. As we now know, plaintiff received two weeks additional time to file opposing papers without even making an application and yet complains that the Court is prejudiced against it.

the context of plaintiff's most recent application speaks volumes for the motivation behind the request that the Court recuse itself. The application has been made on a totally unsupportable pretext solely for the purpose of postponing the final disposition of this meritless lawsuit.

Mark D. Geraghty

Sworn to before me this 6th day of June, 1975

PLAINTIFF'S MOTION TO VACATE SUMMARY JUDGMENT AND EXHIBITS DATED JUNE 17th, 1975 (P. JA103 - JA225)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR INC.,

For referral to Frankel DJ.
NOTICE OF MOTION

Plaintiff,

71 C 1211

- again -

Motion made Pursuant to FRCP, Sec. 60 & 55C

NEW YORK NEWS INC., HAFRY GARFINKLE, UNION NEWS COMPANY INC., American NEWS COMPANY and Ancorp Inc.,

Defendants.

SIRS:

PLEASE TAKE NOTICE, that upon the affidavit of ROBERT W. FARRELL, sworn to the 17th day of June, 1975, the content of his affidavit in recusance of the presiding District Judge, Hon. MARVIN E. FRANKEL, preliminarily herewith being filed, sworn to the 17th day of June, 1975, and upon the decision-Memorandum No. 42562 of the said District Judge, dated June 9, 1975, and all the papers and proceedings heretofore filed and had herein,

The undersigned will move this Court, before a properly assigned Judge at the Courthouse, herein, at Foley Square, New York, on the 3rd day of JULY, 1975, at 9:30 A.M. in Courtroom No. or such other as may be assigned for the hearing hereof, for an Order vacating ab initio the said Decision-Memorandum, and any Judgment entered thereon or to be entered thereon, as an extra-judicial act, a legal anomaly, a nullity in law, an abortive attempt of the Judge to effect a single, joint and concurrent disposition of two incompatible judicial processes, one in personal recusance of the deciding Judge, and the other in adjudication of the pending case, and as product of undue haste

Charles of

and a denial of due process; and for such other and further relief, by any of reinstatement thereof and of a time schedule for the further prosecution and defense of the within case, and otherwise as may be fitting in the premises.

DATED: New York, N. Y. June 17, 1975

KULTU

Attorney for Plaintiff Office & P.O. Address:

SIRS:

PLEASE TAKE NOTICE, that the undersigned will serve and file a second affidavit, concerned with the merits of plaintiff's case within 8 days from the date hereof, and well within the time required for notice of motion under the rule.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR INC.,

71 C 1211

Plaintiff,

- against -

NEW YORK NEWS INC., et a?

Defendants.

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT W. FARRELL, being duly sworn, deposes and says:

I am the chief operating officer of the plaintiff

Corporation and its attorney herein.

I am fully familiar with the history of this case and of the plainti of in its relations with the defendants, as alleged in the within Complaint.

I make this affidavit in support of plaintiff's motion for vacature of a Memorandum-Decision, dated June 9, 1975 made by District Judge Hon. MARVIN E. FRANKEL, presently assigned to the case, (after three prior judicial assignments, first to District Judge Carter, then to District Judge Owen, and again back to District Judge Carter, all made on Court Administration's own motions).

I make this application to vacate said Memorandum-decision, granting to defendants, summary judgment, in this anti-trust case, for damages in sum of \$90,000,000, copy of which Memorandum is attached hereto. As appears, motion for summary judgment was actually made by only one of the five defendants, New York News Inc., orally joined in by two others, and granted

on alleged default and/or for default alleged in non-prosecution of plaintiff's Complaint, to all defendants.

I make this application for vacature thereal, as paper purporting to make a final adjudication hereof, in defendant's favor, signed and filed by the District Judge; and which, in deponent's opinion, and as advised in fact and in law, is an extrajuridicial exercise, a legal anomaly, and deformity, a nullity in law, and an unprecedented joint and signle and concurrent disposition of two imcompatible and independent judicial processes, one of necessity being preliminary to the other, all by suprise.

In the interest of brevity, we are attaching a copy of an Affidavit that is being preliminarily and independently filed with the said District Judge, pursuant to the requirements of Sections 144 Title 18 of the United States Code, addressed to Hon. MARVIN E. FRANKEL, District Judge herein, and which otherwise speaks for itself, in relation to, and in support of, the within Notice of Motion.

The alleged Decision-Opinion consists of 11 pages, the first six and the last three, devoted to the case at bar and, sandwiching, in three pages in between, a treatment by the Judge of the subject of his own recusance, in violation, as will be seen, of the two recusance statutes, Sections 144 and 455 of same Title 28. U.S.C.

Thus, the District Judge, while under known recusance, in unprecedented fashion, first proceeded to deal with the case itself, in respect of the central issue which has, ostensibly,

delays in prosecution, not being presently or asserted really by defendant NEWS counsel, or in fact, by any other counsel for the five defendants, or in any papers before the Judge on the present motion for summary judgement. Then therewith, the District Judge, most incidentally, uses the questioned subject of an alleged non-existence, or of existence of a filed Affidavit for his withdrawal from this case, to further demonstrate the need of, or his conclusion of the necessity to grant motion for summary jugment, declaring a "default" in plaintiff's making answer thereto, as basis for same, or for a dismissal for lack of prosecution, on the same ground. Then follow the three remaining pages in further support of that conclusion, which, we believe, had already been preconstructed against the plaintiff, as we have felt, and alleged, in our affidavits of disqualification.

For it must be remembered that this Court by Carter,
D.J., had already passed upon the defendant NEWS' motion for a dismissal of the Complaint, for lack of prosecution, by denying it,
in or about the month of Aug1973; and, that, since then there has been, we show, a most diligent prosecution, except as same was stalled by deliberate acts of the various defendants; on each occasion, then currently complained of, by plaintiff's counsel, and elimaxed with their production of a full year's delay, and their concerted hold-up of the entire case, all as set forth in our all-out recital letter, addressed to Judge Frankel, annexed hereto, dated April 26, 1975. That letter to this day stands undisputed by either Judge Frankel or any defendant or counsel.

AS TO THE FAILURE OF PLAINTIFF TO SERVE, OR FILE, "ANSWER" TO THE MOTION FOR SUMMARY JUDGMENT AND JUDGE'S CLAIM OF LACK OF PROSECUTION BY ELAINTIFF:

On May 27, 1975, we had already fully submitted our

own motion for enforcement of prior authorized discovery orders,
and for further discovery, and other relief; that motion had been
specifically authorized by Judge Frankel in his Memorandum-Letter

of May 6t, 1975, addressed to all parties. That
letter was clearly designed to bring all matters, and parties to a
state of early completion of all preliminaries, pre-requisite to the
contemplated trial, of the action tentatively set for June 9, 1975—
over our objections, as then being systed to the parties and to the
Judge. We then showed beyond dispute, that all delays had been
the product of our adversaries' efforts in avoidance of compliance
with Court orders, etc.

None of this is mentioned, one way or another, in the Judge's Opinion of June 9; thus, he avoiding the allocation of fault and responsibility therefor, where it truly belonged. It will be noted that, where the Judge himself deals with allocation of such fault, he recites our Complaints, but enters no opposition or contradiction of our facts or claims. (p. 7)

However, when the Judge instead, moves over to a strange consideration of our announcement that we were not filing "answering" papers (after filing recusance process), to the motion for summary judgment. (There being no further need for any papers on our own authorized motion.)

The Judge plainly adopts a skeptical attitude as to the existance of recusance paper or its filing; and upon that sole ground, he reached the bizarre conclusion that we were in default

or not diligently prosecuting, and thus delaying the process, preliminary to the trial. We were under advice that we could not legally both submit answer to the Judge and recuse him as Judge, that the two were legally incompatible, and inconsistent with each other.

Actually, the Judge, at first, and then now, expressed deep doubts as to whether any motion for summary judgment lay at all in a \$90 million lawsuit, centering bout conspiracy of defendants to defeat the anti-trust statutes, or that such suit could be disposed of thereby. And, we are advised, that such is sound law, for the essential elements of motivation and intent, related to defendants' alleged plan and scheme, are too profound to be dealt with, by or on paper submissions; and that a jury alone would have to resolve effectively such factual issues, where, as here, jury is demanded.

But, as the Judge then stated, such motion could, as a convenient device, at least, serve to organize, and focus the issues for trial, and provide the Judge with the guidelines for trial, in place of a pre-trial Memorandum, then being discussed as a more meaningful equivalent. Suddenly we found ourselves confronted with a mandate by a hostile Judge, as we show.

The Judge, however, has not taken a non-legal course, Tainhed in the intervening legal and solemn recusance process, as a mere interference, (viewing it debasingly), with the Court Plan (p.3) for three-year old cases. It will be noted that the Judge

repeatedly, beginning with the very first sentence of his Opinion, emphasizes the "4-year" age of the "ancient" "old" case. The Judge also refers to the arrival of this recusance issue "at this late hour", overlooking the fact that the statute itself (144 Title 28 USC) provides that such affidavit must be filed "10 days before" the Trial etc. The affidavit was filed and dated May 29, 1975 and the trial was set for June 9, 1975.

We submit that the process of recusance takes absolute precedence, in Court proceedings, and holds a priority over all other Court rules, plans, procedures, and determinations of a Judge; for, obviously, there is no true adjudicative or other judicial action, in absence of a fair tribunal and a fair presiding Judge; and so that the Judge, and the parties may not treat it as a mere inconvenience or disturbance to plans or objectives, which they may be entertaining, individually.

It seems that the Judge applied the mandatory halt of
the 144 disqualification statute, solely to our authorized and
already submitted motion; which, by its nature, was preliminary
to the treatment by us, on preparing our answer to the application
summary judgment, or for any pre-trial Memorandum.

Most important as demonstrating that summary judgment was already in Judge's mind, before May 30, the day on which we were to submit "an wering" papers, if the Judge had not been relieved with the filing of recusance process from taking any further judicial action, (until recusance was either in or out by a determination of the District Judge), we quote: (at p.7)

JAIII

"Coming at last to the application, I am compelled to find it insufficient for any purpose - either to accomplish my relief from the case or to delay further a decision in defendants' favor on their motion for summary judgment."

He holds (p. 8)

"the assertions he presents fail on their face to make such 'bias or prejudice' as could require me to remove myself from the case."

And, at p. 7 he refers to "duties of office" also. This is contrary to the new provisions of 455, barring a Judge from refusing to withdraw on ground of "duty".

The undue haste of the District Judge in each respect to act judicially on the case, while intertwined with obligations, in priority, to determine his recused status, only confirmed our worst fears of his predisposition against plaintiff's case and cause, and we submit, cannot be excused even in an "ANCIENT" case, or by the Court Rule governing three = year old cases (p.3).

The Judge concedes (p. 3) that the "Rule" gave our case "The highest possible priority" which, we submit, entitled plaintiff to more then the hasty treatment accorded its case, and matter of conviction, which had been growing since his entry. It is clear to us in plaintiff position that he had a predetermination to defeat our cause and thus to assist the defendant NEWS INC.

One thing is clear even from Judge Frankel's writings, that he has allowed himself the unjudicial luxury of anger and impatience (p.5), and it is clear at whom that has been directed; and it is equally clear, free of all dispute, as to who was the cause of that anger, As centered about the issue of delay in moving the case forward.

For, his letter to all parties of June 2, 1975 discloses that predetermination. Casting doubt upon my credibility, on my reported filing of the recusing affidavit, and without have ing yet seen the recusance document, while conceding:

> "It is conceivable that Mr. Farrell has grounds of which I am wholly unaware for effectively demanding my withdrawal"

he advises all parties, in his 'rush to judgment',

"You may be certain that I shall be turning to the motion for summary judgment within the next day or two."

This bold proceeding forward with the litigation by the District Judge, while actually under recusance, is specifically barred by Section 144, which declares literally and absolutely, that the District Judge

"Shall proceed no further"

with the case in any respect, pending the undetermined recusance process.

In that same letter, in most proper manner, he announces,

"I shall, of course, give full attention to any motion of Mr. Farrell, if and when he succeeds in submitting it."

But, at that fine, our motion, which the District Judge himself had specifically already authorized in writing some two weeks before, and was submitted on May 27, 1975, with minor or no MAL opposition from the parties. Thus, our motion for various reliefs, essential to our answering treatment of any motion for drastic summary judgment, which the Judge was admittedly, using as a full pre-trial focus of the triable issues, had a priority, both in point of time, with its completed submission, and in point of practical logic.

However, the Judge, in his anomalous, joint, subject-disposition paper of June 9th, comes in at p.6, with the mere incidental, footnote, afterthough reference to a disposal of that motion as a "grossly tardy and otherwise unmeritorious motion."

The Judge spends six pages on the case and its lack of merit, and then from pages 6 to 8 on the recusance matter, and then returns full force, and then from 8 to 11, he again goes into his attack repetitiously against plaintiff's case, while remarkably Mand unexplainedly, expressed

"the REGRETTABLE FACT THAT THEY (the moving summary judgment papers" ARE UNOPPOSED." (p. 8)

One asks what possible meaning can be in the Judge's mind, expressing such regret, when all he had to do was to extend plaintiff's time to answer, to get such regrettably absent OPPOSITION, precisely as he had done with the date for trial.

We fear that the Judge, on being recused, saw this as an opportunity to satisfy a previous vested predisposition to hand us a defeat.

Although the record is replete, on discoveries, with evidence pointing to guilt on defendants' parts, in conspiracy and combination to suppress plaintiff, not a single reference thereto is WEIGHED, or even mentioned; he did not call on defendant to produce the necessary evidence to support such heavy burden.

This affidavit is hereinafter confined to startling evidences at the hands of the District Judge, from which inference is inescapable for us that he has earlier already entertained the predisposition against us that we had felt. We enumerate them, one by one: (see recusance affidavit) Pp 5-9

The Judge has demonstrated beyond any doubts his indifference to the statutory provisions for recusance and his hostility accordingly to plaintiff involving duly in 144. Apart from this, that statutes absolute postulate at p.7 that the time of filing of an affidavit under 144 is "not important in any event" (p. 7) (though made most crucial by the statute), he adds these most significantly revealing statements, thus disclosing complete unconcern with that governing statute, it would seem, and therefore I must feel, and have felt for this plaintiff's case;

"Defendants have done more than plaintiff, defaulting, is entitled to. Beyond confronting a plaintiff, who does not deign to respond, defendants have shown that the absence of response reflects an overwhelming probability that plaintiff has nothing to respond with."

Thus, the Judge has debased the obligation of priority of the recusance process over that of the answering step.

It was only too obvious to a fair-minded Judge that

plaintiff would not be in default, and could not submit any

further papers to the recused Judge and not until the

issue was duly determined by him, one way or another. That alone

was his duty and to await that was plaintiff's only course.

WHEREFORE, your deponent respectfully prays this Court that the within motion be granted in its entirety.

ROBERT W. FARRELL

Sworn to before me this day of June, 1975.

Shyden. Fredlet

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR INC.,

APPLICATION BY AFFIDAVIT FURSUANT TO SEC. 146 (AND 455) TITLE 28 U.C.C.

Plaintiff,

7101211

- against -

NEW YORK NEWS INC., HARRY GARS INKLE, UNION NEWS COMPANY INC., AMERICAN NEWS COMPANY and ANCORP INC.,

Defendants.

State of New York)
: ss.:
County of)

ROBERT W. FARRELL, being duly sworn, deposes and says:

I am the plaintiff's chief operating officer and its
attorney of record herein.

I make this affidevit in accordance with requirements of Section 144 Title 28 USC and the newly amended 455, Title 28 U.S.C. in recusance of District Judge MARVIN E. FRANKEL and I certify to good faith in its presentation to the Court.

I make this affidavit, incorporating by reference a previously filed affidavit, which was lost in the Clerk's office after being filed by me on Mry 29, 1975 at about 3:20 P.M., with the Clerk - BECKER, at the Cashier's window on the 6th floor of the Courthouse, with whom I had been directed by the Office to submit same for filing.

This affidavit is submitted, bringing relevant events, bearing on the District Judge's hustile conduct, up-to-date, including his apparent refusal to accept, and his rejection, of the fact of the mysteriously disappeared ettempted first affidavit,

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This affidavit in recusance is now filed because the Court rejected and returned and rendered aborted and abortive the earlier affidavit by mail, while the District Judge was callatered ally dealing with and referring to its contents, in an opinion dated June 9, 1975. It is filed in prospect of and concurrent with plaintiff's motion to vacate same.

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My good faith in recusance complaint is as a mature member of this Bar, not questioned by the District Judge; in fact he acknowledges he has "no reason to question that." (Yet, at pp. 7-8, he hold all the complaints "PIATRIY SIZEVELESS".)

I, however, now therefore cannot reciprocally say the same to this Court, which I highly respect as a practicing member thereof.

"ordered" by him to date the original receipt as of May 29, 1975.

Our version is that the Clerk - BECKER, upon my demand, uade notation of filing on that day, retroactively to May 29, 1975.

In apparent proferred defice of his person, though no such question has been raised by me, he volunteers.

"Indeed I have not known Mr. Farrell or this lawsuit long enough to have feelings about either that could fally be dubbed "emotional" ".

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section 455, Title 28 U.S.C. by Congress most recently amended (On December 5, 1975) mandates now that a Judge

(a) "shall disqualify himself in any proceeding in which his invertiality might reasonably he questioned."

I am advised that this legislative addition goes much further in favoring the aggrieving litigant, and his doubts as to the Judge's impartiality.

We submit that the actions of the Judge and in web tion to the said disappeared affidavit, and in their present violations or misconception: of the statute, and has indifference to its requirements, offers further confirming evidence for me, and my feelings and conviction, that plaintiff would not and could not receive fair judicial treatment of our cause at his bands; and our worst fears have been justified as evidenced by the epinion by ////

We are not here concerned with or motivated by any unfavorable rulings or decisions, made by bins as Judge in charge.

We are concerned purely with the earlier, and now, new evidences
of an attitude, on his part, toward plaintiff's cause, incompatible
with a confidence in this plaintiff as a litigant before him, that
a fair end impartial disposition of the issues herein, would be
present, or rendered.

We submit that any reader of the latest writing of the District Judge must feel its imbalance, the unprestigious references on the one hand to plaintiff, and on the other to our prestigious adversaries, even those who have not sought summary judgment by any substantive presentation therefor; but they are, at one and same stroke, granted simultaneous summary judgment.

We list below the latest acts of the Judge that further have required us to feel that we cannot obtain justice in his Court:

- (1) Far from reasonably accepting the caus for his Court administration for the loss of our filed but disappeared original affidavit, in his Court, the District Judge at once launched out on an attack on this affiant's credibility, as to the filing thereof, as an officer of this Court; and thus also did beswirch the entire solemn recusance process, while at the same time both professing to have no personal knowledge of this departent and certifying judicially to my good faith in recusance.
- (2) Having by letter dated June 2, 1975, after the Court's professed inability to locate the recusance document, elevandy clearly phrased his poised readiness to grant successful judgment, on voluminous papers, and a record, which bad not yet

JAI 21

arrived at Chambers, and analting completion of submissions, in violation of the recusance statute, (specifically prescribing upon said filing, that the Judge "thall proceed no further" in the case except to concentrate his judicial and personal efforts, on determining the sufficiency in law of the affidavit to constitute a legal statement of personal bias and prejudice, or the timeliness of the recusance application, the District Judge instead launched out on a decision on the merits of the case, though only unitaterally presented in any event.

- (3) The Judge was using as appeared, the interim period while professing to deal with the problem of the lost afficivit in recusance, to consummate his constructing of the "summary Judgment" for the defendants.
- (4) The fact, that defendants themselves in their submissions, anceded and allowed that the plaintiff may well come forward with a case requiring a trial, and thus effectively were themselves barring grant of any summary judgment intheir favor, (even as also the District Judge allows that in a conspiracy case, where intend and motive remain to be determined by a Jury or Trial Judge after hearing both sides on such facts, no summary judgment can lie, (p. 4)) the Judge in such undue haste for the defendants was reflecting his attitude of hostility ogainst us, as we sensed and recited in our lost affidavit.
- (5) The Judge's open and other displays of indifference to the requirements and limits of the governing statute 144 and 455 as amended, while moving forward to adjudicate against

plaintiff can have so other effect upon plaintiff and deponent, than to sense a predetermination to assist the defendants and to defeat the plaintiff:

- (a) He has unequivocally declared that the time of filing of recusence affidavit, is of no importance in any event, while the statute makes that a determining factor in the judge's conduct instantly to follow.
- (b) He twice (pp 6 & 7) refers to non-service of our recusance affidavit upon adversaries when statute requires no more than filing same upon the Judge.
- (c) He has made his "duty" as a judge (p. 7) the governing factor, when under the amended 455, that concept has yielded before the grander concept and more modernly accepted that the litigant's confidence shall not by any conduct of the Judge be impaired in his feeling that the Judge will dispense justice, that the appearance of justice is equally important with the Judge's own feeling that he can be just.
- (d) The District Judge has defensively Jone that which is barred by the law and authorities; he took issue with the facts alleged in the 144 affidavit, when the statute bars such procedure in defense; the remedy for false affidavit in a litigant being punished for contempt of court, with no alternative in the Judge except to withdraw. As we are applied.
- (e) He has claimed "insufficiency" of the affidavit in law, most barely, only undoubtedly to fit within the statute (p.8); but on the contrary, he merely contradicted or contested the facts alleged as basis for claim of bias. Such claim of insufficiency must be weighed in any event with whether his

JA1 23

impartiality "might rea onably be questioned." (sec. 455 Title 28 U.S.C.)

- (f) The District Judge has laid claim, in contradiction to deponent's statement of the facts, that he ordered the Clerk to accept the paper (p. 6). It had already been received for decketing and LOST.
- (g) Though delay in going forward with the suit is the main, and only cause for the Judge's dismissal, he has consistently ignored the causes of the delays, which the record shows, were always, (except for the early period, fully conceded and explained), at the door of the defendants, who were tying our hands of prosecution, with their own delays, as explained in our sole, one letter of length, recounting the entire hisotry of the delays, clearly placed at the door of the defendants.
- (h) Though practising by long letters was the exclusive practise of adversaries, it was showtilely and falsely ascribed to us, and again, in the present Memorandum, and not-withstanding that the fact was undisputedly demonstrated to the Judge, as their practice, not curs.
- (i) The District Judge citing the "Plan for Reallocation and Di position of Three-Year Old Civil Cases", fails to state that he gave relatively liberal extension: to adversaries without the showing of extraordinary hardship as required by the Plan rule and we were given too days only.
- (J) We here mislead by the District Judge granting us his approval of our bringing on a motion for discoveries,
 etc., but which he never again respected, and omits any mention
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Units upon discovery, he ignored that (a) advergaries violated his di covery orders, and that one year of useless procedures in bankruptcy court, was undisputably caused by adversaries, with mary a word of criticism from the Judge.

- (k) The Judge in hostility to us hos misstated the facts at p/4. Defendant did not "urge" the step of
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 a case, (p.e) then considered that it might serve to focus issues,
 like a trial memorandum, which was first suggested, and with our
 approval.
- (1) The motion papers for summary judgment of defendant NEWS are described by the District Judge as "thorough and powerful". This, for me, mu t be deemed a hostile attitude display, because by any objective standards, they are a week and tenuous statement, of only an attorney's fiffidavit; which, all authorities hold cannot be sufficient basis for summary judgment.
- (m) The Judge has in each case evaded, or contradicted such facts as we submitted under the Section 144 requirement. That should have produced his retirement, without more ado. He has instead resorted to every form of response, except to "proceed no further", as statute dictates (164).
- (n) The Judge as evidences by his bias, in our mind, made punjent reference to defendants' early motion to dismiss for lack of prosecution and as part of his own claimed the sluggish conduct of plaintiff's case; but he omits to state that maid motion was denied by his colleague prodecesser, District Judge (Carter), and that we volunteered and explained the fact of the early secessitated delay on our part; and that prosecution

has, since, been steady, and uninterrupted by us since then, except for the long interposed delays of our adversaries, all as set out in our one long and historic responsive letter to the Judge of April 26, 1975, herewith attached (Exhibit). That showed, that, for a full year or so, the defendants had combined to delay this case, using the bankruptcy court herein as a ploy, to hold up its prosecution and the discoveries, et al. And, the Judge remained mute about the interval loss of that one year or so in this case. Certainly, I could not feel that the District Judge was fair, or is fair in that vital respect, delay being his central issue for grant now of accelerated summary judgment.

WHEREFORE, on behalf of the plaintiff, I ask respectfully that District Judge, Hon. MARVIN E. FRANKEL withdraw from this matter and proceeding, presently seeking the vacature of the decision memorandum of June 9, 1975.

ROBERT W. FARRELL

Sworn to before me this

17 day of June, 1975.

BOOK SOR STAND AND AND

Committee Expres to carde IV

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR INC.,

APPLICATION BY AFFIDAVIT FURSUANT TO SEC. 144 (AND 455) TITLE 28 U.S.C.

Plaintiff,

- against -

71C1211

NEW YORK NEWS INC., HARRY GARFINKLE, UNION NEWS COMPANY INC., AMERICAN NEWS COMPANY and ANCORP INC.,

Defendants.

State of New York)
: ss.
County of)

ROBERT W. FARRELL, being duly sworn, deposes and says:

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attorney of record herein.

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I make this affidavit, incorporating by reference a previously filed affidavit, which was lost in the Clerk's office after being filed by me on Mmy 29, 1975 at about 3:20 P.N., with the Clerk - BECKER, at the Cashier's window on the 6th floor of the Courthouse, with whom I had been directed by the Office to submit same for filing.

This affidavit is submitted, bringing relevant events, bearing on the District Judge's hostile conduct, up-to-date, including his apparent refusal to accept, and his rejection, of the fact of the mysteriously disappeared attempted first affidavit,

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Yet at the outset of his Opinion, he refers to a "once famous newspaper" of the same name; which, to the public has generally been conceived as a revival of the earlier newspaper ownership.

It is not incumbent upon us to delve into the Judges motivations for his evident hostility; the law, as I am advised, is that the Judge must so conduct himself as to make the litigants before him feel comfortable with him as a repository of justice and of just attitudes, irrespective of the adverse nature of his rulings. The Judge admits that as litigant, I genuinely "feel this way" (p. 7).

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WHEREFORE, on behalf of the plaintiff, I ask respectfully that District Judge, Hon. MARVIN E. FRANKEL withdraw from this matter and proceeding, presently seeking the vacature of the decision memorandum of June 9, 1975.

ROBERT W. FARRELL

Sworn to before me this

17 day of June, 1975.

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Commit as Expres to an all

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

Plaintiff,

-against-

71 CIV 1211

NEW YORK NEWS, INC., et al.,

Defendants.

STATE OF NEW YORK) : SS.:

COUNTY OF NEW YORK)

ROBERT W. FARRELL, being duly sworn, deposes and says:

I am submitting this affidavit, in accordance with our Notice of Motion, as affidavit of merits, in presence of "default" taken by the District Judge.

INTRODUCTION TO OUR AFFIDAVIT OF MERITS

The Judge's Memorandum of June 9, 1975 at p.8 declares in manner of sudden realization:

"that there will be no occasion have a trial after all."

That opinion mu t be read in conjunction with the following prior conditions, bearing contrarily, on the central subjects of (a) case delays, and (b) failur of plaintiff to make answer to motion for summary judgment (being the alleged justifications for dismissal).

- (a) The Judge's own revealing Memorandum of May 6, 1975 (attached as Exhibit A), plainly placing the blame, at that time, on delays, charged to defendants, by us, for their non-cooperation on our pending discovery proceedings.
- (b) Our completely submitted motion (for further discoveries) actually authorized by the Judge, in same writing (May 6, 1975), returned May 27, 1975, presented as prerequisite to our making answer to claim for summary judgment, and awaiting Court's decision, (in principle already favorably propounded by the Judge; in granting us some three other EBT's, and documental discoveries).
- (c) The date fixed for our submission of ancwering papers, Friday, May 30, 1975, one day AFTER the Judge's learning of the recusance filing (May 29, 1975).

Thus, in the light of the foregoing, the following prophetic excerpts from the Judge's Letter to our adversaries, and us, dated June 2, 1975, speak clearly for the Judge's predetermination (as we claim on recusance) in the very presence of the recusation.

"The problem of prediction and scheduling for both Court and counsel is exceedingly difficult. It may well be that the comPLAINT is SOON TO BE DISMISSED on the granting of summary judgment against the defaulting plaintiff."

The Judge, however, at the same time acknowledges:

"It is conceivable that Mr. Farrell has grounds of which I am wholly unaware for effectively demanding my withdrawal."

and then nonetheless adds, in the face of that seeming openmindedness,

"You may be certain that I shall be turning to the motion for summary judgment WITHIN THE NEXT DAY OR TWO"

However, he had not yet made any decision, nor reference to our authorized preliminary motion, already fully submitted to him on May 27, 1975. The first reference thereto appears as an afterthought footnote on p. 6 of his dismissing

June 9, 1975 Memorandum, notwithstanding that he had assured us on June 2, 1975

"I shall of course give full attention to any motion by Mr. Farrell, IF AND WHEN HE SUCCEEDS IN SUBMITTING IT."

Judge FRANKEL in his Memorandum of June 9, 1975 expresses his absolute opinion that an antitrust case is

"amongst the least likely candidates for summary judgment (p.5)

and again, appropriately,

"it could not succeed."

For, we are advised, that, in civil cases, motive and motivation and intent of the defendants, charged with civil and criminal violations of anti-trust laws, are, of necessity, central issues of fact, for a trial by Jury (as herein) or a Trial Judge. Mere paper allegations by defendants in denial, and worse, by their attorneys, with no personal knowledge, (as herein) cannot serve as a legal basis for defendants' summary judgment. So, Kule 56(e) FRCP

(apart from the moving party NEWS INC.) offer nothing in support but merely add their "me-too" joinder with their alleged co-conspirators. Yet, judgment is extended to all.

On the other hand, the voluminous exhibits, virtually all of which remain careferred to by the Judge, in his Memorandum of June 9, 1975, disclose that the defendant-principals have had, and suffered, adverse adjudications, individual and personal, against them, recording the same conspirator-type of unfair trade practices as charged herein against them by us; and it is therein shown that some are crime-associated characters, with their use of force indicated, and who now appear in a highly praised role, as "successful" operators, in the Judge's Memorandum of June 9, 1975. While we, as their victims, as alleged, are rendered as in tiny unsuccessful goles, and with which, therefore, dismissal of our complaint has come so easy to this Judge.

The Judge's opinion of June 9, 1775 is silent in all such defendants' guilty respects; but it finds repletely, that defendant News' presentations are "cogent", "persuasive" and "highly persuasive", "careful and compelling" (p. 8), putting his stamp of judicial approval upon their personal "affidavits" as "people with knowledge denying the acts of conspiracy and other wrongdoing..."

And the Judge so thoroughly accepted all this to give these defendants, all, summary judgment, although he expresses "judicial regret" (p. 8) that there is no answering opposition, before him of plaintiff's, which he himself hastily acted to bar, as shown.

As for further proof, that counsel for News, or others, were not complaining of our delaying prosecution, of this case, another example is that upon our demand for production of co-defendant Ancorps' agents, McCullough and Levine,

Mr. Craghty, in affidavit, dated April 16, 1975, states:

"Since we represent neither of these defendants, we do not take any legal position with respect to the procedure being followed by plaintiff's attorney to compel these two individuals to testify." (p. 3)

It is well known that summary judgment, on motion by defendant, where Complaint is held to be sufficient in law; can be only for insufficiency of Complaint to state a cause of action, or for lack of jurisdiction over subject matter, or over person of the defendant; or upon defendant's reliance is on admissions, documents, in bar of the action, like res adjudicate, satisfaction and release, etc. No such documentary proof is offered. On the contrary, the evidence in form of examination before trial admissions by them, is withheld; and generally the attorney-adversary's analysis and valuations are the sole matter before the Court. The heavy burden of a movant for summary judgment, is hardly met thereby, we submit. (Rule 56, FRCF).

We further submit, that short of such production by movants, of documentary evidence in bar, only a motion for dismissal of Complaint at end of plaintiff's case, on trial, for an insufficiency of prima facie proof, could avail the defendants.

If, of course, the dismissal is granted solely upon "default" in our failure to answer the motion, on May 30, 1975, we had already filed recusation papers a day before, whose procedural rightfulness and good faith is accepted by the Judge. For, he is compelled to "proceed no further".

(Sec. 144, Title 28 U.S.C.).

It seems that the Judge should have, not only, advanced the date for trial from June 9, 1975 as he did, in his Letter of June 2, 1975, but also should have provided for extension of time to make answer, pending his action on, and determination of, the recusation process.

The Judge had made references to its submission "at this late date", when the statute provides that affidavit may be filed "at least ten days before the term" or at other time as necessary. We made ours, ten days, before the date set for trial, to wit, June 9, 1975, and one day before we were required otherwise to submit on the merits; which, as we were advised, we, as litigants, could not consistently do before a Judge, who had lost our confidence.

opposing counsel, as parties to be served under Section 144.

That statute reads only for filing of an affidavit directed to the Judge recused; and the matter is then, with his duty-bound conscience, and not with adversary attorneys. It would seem, that assistance, by affidavit of an attorney (Mr. Bolan), who never had any participation with us in the case, by way of resque of a recused Judge, only degrades the recusance process; which, as we understand, is a one-to-one relationship of conscience on both sides thereof.

At p.2, the Judge's Memorandum surprisingly refers to plaintiff's answers to defendant News' interrogatories, as having

"asserted lack of pertinent information"

to support its Complaint; and at p.9, the Judge declares, in
complete adoption, counsel's naive assertion, that plaintiff
has admitted being without evidence in support of its
pleading!

Counsel swore:

"Responding to interrogatories, plaintiff has aeknowledged its entire lack of evidence to prove its charges."

Of course, if such statement were made by plaintiff or its intimate Counsel of record, we should not be proceeding any further herein. Far from such state of our case, from adversary's concurrent statements, it is demonstrable, that even he, as Defendant News' counsel, intended no such foreclosable construction to be placed upon his words, as we now set forth:

In his affidavit, he allows for further evidence in support, stating:

"If plaintiff has such evidence, it should come forward with it now."

In fact as late as June 6, 1975, counsel allowed that his application for summary judgment might be denied, in the presence

"of some showing by plaintiff which has
not yet been made."

And, at the conclusion thereof, he states:

"If the Court is, for any reason, inclined to give plaintiff at ther opportunity to show that triable issues exist in this action which would defeat defendant's motion, we respectfully request that plaintiff be advised that it will only be entitled to seek further discovery in the manner provided by Rule 56."

Mr. Garaghty went even further in his affidavit of June 6, far from believing that he had such conclusive case; and from opposing our expressed need for more time to answer, declaring:

"If he needed more time to deal with the motion for summary judgment, WE WOULD NOT OPPOSE SUCH AN APPLICATION."

We now extract those words in our answers to

defendant News' interrogatories, from which Mr. Garaghty drew
his naive conclusion, that we had admitted, and "acknowledged"
that our pleadings were entirely unsupportable by any evidence
in our possession.'

each, will be seen to demand our personal knowledge as legal evidence, to wit, of the acts and actions of the defendants, alleged broadly by our Complaint to be of a conspiratorial and secretive nature, and which we declare to be in the exclusive knowledge (naturally) of the actors. That was covered, where necessarily, plaintiff proceeds, on information and belief, produced from, and by revealing circumstances, which become themselves the evidence; and from which a trial Coury, and Jury, may infer reasonably what actually occurred in those secret councils, to which plaint-

So we answered repeatedly where required so, in such words, to such questions:

"this knowledge exclusively in possession of the defendants;

"solely in possession and knowledge of defendants;

"entirely within the knowledge of the defendants."

This form of answer to written interrogatories of this nature, is merely the assertion of the witness' right to disclaim direct personal knowledge and to lay foundation for Examination before Trial of these secret participants, to reveal what was said, and done, on such secret occasions.

If we have insisted upon further discoveries, it was solely because we are entitled to go into Court with the best evidence, short of pleas in refusal to answer, taking the Fifth Amendment of the United States Constitution.

THE MERITS

and the proof which, we submit, lead to the inescapable set of direct inferences and conclusions; - inescapable, we show, for any trial Court or Jury to draw; that these defendants intended to, and set out in concert, each for his own calculated consideration in so participating, to destroy plaintiff as a competitor of the defendant News, a similar tabloid; plaintiff's publication being designed and planned and set for success as a newspaper, and thus a coming threat to the one

newspaper, the defendant News, described by the Judge as a great "success" (the Judge mistakenly referring to two competitors of plaintiff (News and Times).

We are tentatively concluding this affidavit and will resume by an annexed supplemental affidavit with the Merits of the plaintiff's action.

ROBERT W. FARRELL

Sworn to before me this

A day of June, 1975.

No. 4. 53517 50 17

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

70C1211

Plaintiff,

SUPPLEMENTAL AFFIDAVIT

-against-

AFFIDAVIT OF MERITS

NEW YORK NEWS, INC., et al,

Defendants.

STATE OF NEW YORK)

COUNTY OF NEW YORK)

says:

ROBERT W. FARRELL, being duly sworn, deposes and

I am the attorney for the plaintiff herein and have been its chief operating officer since its inception.

I make this affidavit in suppor of the annexed notice of motion supplemental to the attached affidavits.

Deponent has had an extensive career in the newspaper, magazine and publication field for a period of over thirty years, covering the entire United States and Canada.

In or about April 13, 197, after incorporating and trademark registration (exhibit A attached hereto), I undertook to develop financing for a morning daily cabloid publication in the City of New York, to be known as the Daily and Sunday Mirror, to cover the area of circulation then represented by the distribution of the defendant's "Daily and Sunday News".

The opportunity was great because some four newspapers had gone out of business for one reason or another and
the display space of newspapers on newstands throughout the
City of New York went begging for at least another morning
tabloid newspaper.

I then first undertook to explore the field scientifically by covering first an area upstate, which I was then
advised would be the best means of sampling.

As part of our plan of organization, we of course consulted with competent counsel, on our rights to proceed with publication, and its necessary contractual relationship in conduct of its business and in the light of the prior "MIRROR" history.

In that initial experiment the sum of \$25,000 was spent.

With those results in mind, I tehn proceeded to seek wider financing, for a regular New York edition.

In or about 1969-70, I succeeded in having procured a Wall Street underwriter and an amount of money totalling approximately \$250,000.00, representing a wider participation in its stock issue (Exhibit B), and about another \$ 250,000.00 later.

I was now ready to proceed full force with a Daily morning and Sunday newspaper known as the Daily and Sunday

The organization of our operation and the plant necessary towards its fulfillment was on a most modern technological and economic plan. As a new plant we were enabled to achieve what our established predecessors and contemporaries had done in production, at a minor fraction of their

Mirror respectively.

For example, we could produce over 1,000,000 copies a day with an editorial staff of less than 40 people.

In that important respect, we had a tremendous

advantage over the defendant New York News Inc.

THE CONTENTS OF PLAINTIFF'S NEWSPAPER

I proceeded at once, prior to publication, to acquire writers and artists and features from the leading feature syndicates in the nation; and acquiring as far as possible for those which were still available from the old Hears: New York Mirror, which had closed its doors in October, 1973. (At the time of the New York Mirror demise it had the second largest circulation of any newspaper in the nation, that total being in excess of 900,000 copies a day.)

Among such great writers and features was Victor

Reisel, Jimmy Cannon, Bob Considine, Ken Kling, Walter

Winchell, Jimmy Bishop, et al. As a matter of fact, Walter

Winchell was now returning into harness, after having retired,

at my urging.

Under my management the "MIRROR" innovated a certain handy pull-out section which proved most attractive to such tabloid readership, and which as such had no competitor. We also had contracts for the service of the United Press and other wire services.

Arrangements were being made with United Press for a further independent pull-out covering the stock market.

While the chances for success of this publishing venture, were as reported in the prospectus facing strong competition, and that the publication would be subject to the hazards of the trade which caused at least four New York newspapers to discontinue publication, nevertheless, based on the huge economic advantages of using modern methods, such as "OFFSET", small office editorial staff, and "farming" out all other production facilities such as composing and printing, without having to purchase this equipment, gave the operation a great plus in being able to survive and succeed. Annexed hereto is a certified public accounting company, MANDEL & CO. of New York City, indicating the profit potential of the DAILY MIRROR whi h was not annexed to the prospectus.

All of these figures as stated did not include any substantial revenue from advertising. It could succeed without it. (Exhibit C).

Another decided advantage we had at the outset covered a newspaper's indispensible problem of arrangements for its distribution.

We were particularly favored as part of our organizational plan by having contracts for the provision of all the trucks necessary for wholesale deliveries to the newstands.

The only remaining ablem, as we in management foresaw, was the placement of our newspapers on display on the numerous public newsstands, and particularly those at the railroad terminal and airports, and where large crowds of travelers would purchase newspapers, more particularly the key strategic newstands controlled by the defendants Union News Company (Accord) come 650 and more in number in the

city, state and nation.

However, there was another structural problem, namely to achieve wholesale distribution of our newspapers so that the newspaper would be able to get into the hands of the readers.

Bearing in mind as we did at the outset that large scale advertising would have to await some established circulation, our immediate concentration was upon classified advertising. Our calculation of dependable profitable income was not based, at the outset or as a financial necessity, on the acquisition of such large scale advertising because of our modern, economic and technological plant setup.

Because of such set-up and the need for only a small staff of employees, we were able to assure ourselves of the avoidance of the usual labor union difficulties which were always besetting other newspaper establishments.

IN MY OPINION, OUR ONLY TRUE COMPETITOR WAS THE DEFENDANT -"DAILY NEWS"

Having started out under such propitious circumstances, it was a human and business likelihood, and thus
inevitable that our competitor defendant "NEWS" would invent,
create, and throw into our paths every obstacle to prevent
the defendant "NEWS" from losing its monopoly market.

AND THAT IS PRECISELY WHAT THE DEFENDANT NEWS DID, as we shall show.

But, there was another, separate and concrete condition which conf. onted us, and the management of the defendant NEWS, and compelled it to so act, and of which we were soon, powerfully made aware, at the two initial key stages in our newspaper's existence, - first in 1965 and then again in 1971.

We here refer to two legal notices, 1965 and 1971 respectively, served upon the plaintiff by registered mail, return receipt requested, calling upon the plaintiff in substance to cease and desist from further publication, and intrusion and invasion into its monopoly market, laying claim to the same and to the right thereto by reason of their possession and participation in an alleged ownership contract through completely recret acquisition (October 15, 1963) of all right, title and interest to the assets, permissites, etc. of the earlier Heast-owned New York Mirror. The date, October 15, 1963, wasthe date of the arranged demise by the defendant NEWS of that newspaper with its then 900,000 circulation, which, we repeat, was the second largest newspaper circulation in the United States. (EXHIBIT B 3)

At this point, it is well tonote, that the defendant NEWS never came forward with a copy of that original contract for the entire duration of this litigation despite repeated demands therefor by plaintiff.

It did come forward with same, only after a most recent order of the District Judge, that the same be exhibited to the plaintiff's inspection. And, it is most significant, in revealing its motivation; intent and purpose to destroy plaintiff, that, in its belated production of that tell-tale document, counsel for the defendants first expunged the amount of the consideration which had been paid to the Hearst organization for the suppression of its 900,000-circulation;

and the and wast transfer with them

In the expundment of the said amount of consideration, defendants' counsel persisted in continuing a policy, it had so emphatically adopted on the occasion of the examination before trial, of members of the defendants' law firm, to wit, Messrs. Carter and Rodgers. (See their examination before trial.) See, also, Clause No. 2 and 10C of acquisition contract attached hereto as served upon us by defendants' counsel, pursuant to the order of the District Judge Frankel, (and in such violation thereof), for its production.

The second suppression, visible in the acquisition document served on us, was of the signatories of the agreement, representing both the Hearst organization and the defendant "NEWS", thereby to also prevent plaintiff from obtaining essential examinations before trial of those participants in the construction of that key document and their respective intents in the creation thereof.

Such examination would cover the original collusive arrangements between the parties, and further tend to explain the huge concealed consideration paid therefor.

For it must be remembered that Clause No. 8 of the said contract provides for and is entitled,

"COVENANT NOT TO COMPETE"

We submit that this original contractual relational ship, the evidence of which defendant "NEWS" counsel, sought to keep out of this case, and to withhold from the beginning, goes to the very heart of this anti-trust action, and tends to give relative meaning and purpose to the numerous elements

of the various examinations before trial, taken of the five defendants, their evasions and attempts to cover up and their refusals to answer questions in their examinations; demonstrations of which will be hereinafter made.

It is significant to note that counsel for the defendant "NEWS", themselves under examination as aforesaid, refrained and abstained from taking any implementing steps against the plaintiff at those respective times (1965 and 1971) in enforcement of those demands to cease and desist, etc., citing the aforesaid contract of acquisition.

Instead, the defendant "NEWS! made alliances with its powerful friends in the wholesale delivery, and retail circulation fields, covering not only essential newspapers but also covering magazines essential to the survival of the respective newsstands.

peponent, speaking from experience of many, many
years in the publication field, wholesale and retail, attests
to the fact that a newsstand, small or large, deprived of its
newspapers, magazines and periodicals, cannot long survive;
thus any large supplier is in a position of leverage to control
the actions of the ownership, and management of the newsstands.

Attached to the moving papers of the defendant NEWS, seeking summary judgment, are exhibits of a series of articles beginning with the date July 3, 1969, in the very responsible, authentic investigative reporting Wall Street Journal, showing that the defendant Carfinkle and his companies and gangerater associates, as described therein, have the aforesaid liferand-death powers over the entire publishing field.

That was also established in connection with the Federal

Trade Commission law-suit, charging unfair trade practices

against these parties (70 CIV 5770) which resulted in a

sweeping adjudication against the defendants and the imposition

of large money penalties.

In this connection, it is significant that the Court also found that these defendants were guilty of defiance of the Court's orders, and injunctions, against such unfair trade practices; which, they continued defying for many, many years after the Order thus issued, from April 13, 1964 until about 1972, as will be seen in the records of this Court. (See Bonsal, D.J. Opinion of November 12, 1973.)

Further such references in confirmation, may be seen in the well-respected trade publication bearing the title of "MORE" specifically in its June 1973 issue, submitted by the defendant NEWS in its motion for summary judgment, calling attention to the large dominant influence of the co-defendant Garfinkle, et al, in the publishing field.

We submit that it may well be that these revealing articles in the exposure of the corrupt activities and relations of these defendants may never have reached the attention of the district judge.

The eleven page opinion, reflects nothing of this material, and it may well be that in taking the plaintiffs default, the District Judge felt no need for reading the defendant's exhibited material.

Then, after the publication date was announced to the public, arrangements were made with the METROPOLITAN NEWS COMPANY to distribute the DAILY MIRROR exclusively in the City of New York and wherever else it could be shipped and sold. The Mirror could be sold all over the United States in large major cities as is the NEW YORK NEWS. These sales were contemplated, but not included in our projection.

(Exhibit C).

Late in December, 1970, one named ARCHIE GORDON called upon the office of the plaintiff and assured plaintiff that he would use fifty trucks, union drivers, and would be able to pick up the printed newspaper at a later date than required by the METROPOLITAN NEWS, and would give other personal services of great help, and a better and higher price than that offered by METROPOLITAN.

At no time was it ever disclosed that the same

ARCHIE GORDON was, (and still is) at that very moment, in the employ of the defendant NEW YORK NEWS INC. (See Exhibit D) whose affidavit was submitted in the motion for summary. judgment of the "News" as supporting the application, and which, the District Judge so highly evaluated against the plaintiff in his Opinion of June 9, 1975.

The arrangements for said distribution as carried out by GORDON proved disastrous to us, he having received some \$42,000 worth of Mirror's in four weeks and having only paid some \$4,000 leaving his warehouse filled with Mirror's which were never distributed, nor was plaintiff ever paid another cent, as we later learned.

It was subsequently discovered that GORDON did not have fifty trucks, but had two, the drivers who were non-union, and he had failed to live up to his inducement, that prevailed the decision to distribute with him or his company, Gregg News (Brooklyn), instead of Metropolitan News.

knew no executive in the circulation department of the NEWS, emphatically repeating that answer; yet JACK UNDERWOOD, circulation director of the NEWS, knew of him at once by name, even though there are many hundreds of other employeetruck drivers (p. 99) of Underwood's testimony, and poly of Gordon's testimony. GORDON distributed the MIRROR for about the weeks by arrangement with the defendants AMERICAN NEWS CO. and UNION NEWS COMPANY (again contrary to the District Judge's opinion).

When this plan, at the very threshold, to destroy the MIRROR, and which easily could have resulted in its demise, METROPOLITAN NEWS remagneed to distribute the DAILY MIRROR, and did so for almost 13 months; contrary to the opinion of Frankel, D.J., (p. D.)

Defendant Garfinkle stated in his testimony that
the defendant UNION NEWS distributed the Mirror for many
months, (p.E) and McCullough stated about a week. Mr.

Geraghty's papers in the motion for summary judgment stated
about one week also. (p. 1).

The facts are that the defendants, when examined could not, and did not testify truthfully, at any and all key points.

Once the newspaper was distributed by METROPOLITAN, sales started to increase as did classified advertising, and everyone on the editorial staff was given increase in their salary. Classified advertising also increased, and other ads were obtained such as American Tobacco Company, etc.

The circulation director of defendant NEWS, earning \$75,000 a year in salary, JACK UNDERWOOD, testified and conceded (p. 2 annexed hereto) that the MIRROR was a well-produced newspaper, and stated that at times both the NEWS and plaintiff's MIRROR had the same headlines and same front page photographs on the same day's edition.

Our examination of Underwood, further disclosed that he was president of the GAYNOR NEWS COMPANY in Yonkers, and that company had been acquired by the NEW YORK NEWS (at that time unknown to us). Gaynor was distributing our newspapers in the Westchester area and upstate. (Exhibit).

in a position to destroy plaintiff's business, engaged the clandestine cooperation of the defendant UNION NEWS COMPANY with its 650 centrally located newsstands, not to distribute plaintiff's newspaper, and with control through Gaynor News (which it owned) of the upstate area, the upstate-edition finally after 14 months of life, was destroyed. This wasn't too difficult to do so, even though the product struggled, not knowing the plan to destroy it was working from the first day of its birth.

There came a time when it was clear, that defendant HENRY GARFINKLE was in control of our sources and means of the distribution and circulation of our publication MIRROR.

We therefore set out to meet in one way or another with Garfinkle as the central cause of our problem. He refused a direct meeting with me and so I had to call on intermediaries who were close and friendly with Mr. Garfinkle.

This covered a period from February, 1971 to the last known meeting for such purpose, on or about the 15th day of November, 1971.

We are attaching herewith an affidavit of one Philip Budin (Exhibit II), sworn to and who relates therein that effort by Mr. Budin to obtain the change of mind of Mr. Garfinkle, as to his purpose to destroy the MIRROR as a competition to the "JEWS".

There can be no question but that we of the MIRROR knew and could identify the cause of our threatening downfall.

The Court will note that the defendant Garfinkle's answer to our complaint, in support of his general denial is an allegation of the sole basis for his rejection of our MIRROR, for his widespread and strategically located newsstands, was:

"coercing the defendants (except the "NEWS") to purchase and sell on its newsstands the publications of the plaintiff at excessive and unreasonable prices, which leave no adequate return to the newsstands of ANCORP NATIONAL SERVICES INC., and which are discriminatory and in excess of prices charged to others by the plaintiff." (See answer dated April 9, 1971.)

It is to be noted in passing that in the extensive testimony given by Garfinkle on his examination before trial, he never testified to, nor did he assign those specific reasons in support of his claim. We shall herein show that each of these statements of the four defendants, Henry Garfinkle, American News, Union News and Ancorp are contrary to the actual facts as we hereinafter recite them.

At that time, I had been made aware that Garfinkle and Rosen (Metropolitan) had been feuding with one another, in view of which, I now felt that a meeting with McCullough might be productive.

Whereupon I proceeded to communicate directly with the Garfinkle-controlled companies, speaking to William McCullough, nominal operating head. (Actually, as will appear in his testimony before trial, a mere lackey of the hapoltonic Mr. Garfinkle.)

Keeping me waiting for weeks, undoubtedly at the behest of his boss, he finally consented to meet with me at 1:00 P.M. on June 8, 1971, about three months after the present law suit had been started, at the offices of American News Co., Varick Street, New York City.

At that meeting, McCullough reminded me that Metropolitan News had been in touch with him, and that he had
refused their offer of 11¢ (ca) per copy; and so I immediate—
ly responded by stating that we could now deal directly
with his company, and that he could have the MIRROR for 10¢
a copy. Mr. McCullough replied that he would have to take
the matter up with his Board of Directors and get back to me.

I also advised Mr. McCullough that if price per copy would be the solution of our problems, then we would drop the law suit against all parties.

The affidavit of Mr. Budin is entirely true within my own personal knowledge, so far as I lived through that whole gamut of experience. Mr. Budin, as stated therein, reported at once to me the facts of his efforts through third person named therein, who made the more direct contacts with defendant Garfinkle.

The people named therein are of relative prominence and their common report to Mr. Budin (the corporate underwriter, and later Chairman of the Mirror Board) after having interviewed and made contact with the defendant Garfinkle, that he would not reconsider or further entertain the restoration of the Mirror to his controlled newstands, refusing to their personal pleas. Not one of them reported that the refusal was for economic reasons.

On the contrary, I arranged that a very close intimate personal friend, one Sylvia Filler, whose relations with Garfinkle might be described "as like that of an adopted daughter", to get Garfinkle to cease his hostile attitude toward our Mirror, and to replace it on his stands; and the only answer she got from him was, "stay out of this, it is bigger than you think."

The Court will understand that it may be necessary to serve Ms. Filler with a subpoena as a naturally reluctant witness.

Bearing in mind that the Metropolitan News Company, by David Rosen, its head, had become our MIRROR's exclusive distributor, in the regular course of its business, sought to get the American-Union News Company to accept our Mirror for sale on their vast network of newstands, but was unsuccessful in that effort. He also reported to me, and gave us permission to deal directly with American-Union Company. This release to us by David Rosen, was important because he was thereby waiving his distribution commissions; which would enable us to give to the Garfinkle-controlled companies a lower price per issue.

The affidavit of Philip S. Budin tells of his having taken up the problem of the Mirror's circulation through the American and Union News Companies, through the well-nown author and columnist and television personality, Cindy Adams, who at that time was a featured writer of a column for our Mirror.

Joey Adams, her husband, equally well-known, and a friend, and also known to be "like a son" to the defendant Henry Garfinkle, acted with his wife, Cindy, to adjust matter with Garfinkle for us.

Unable to receive any light from Mr. Carfinkle on the subject, Mr. Adams arranged a meeting with attorney, Roy Cohn, at Cohn's home, he being Garfinkle's personal attorney.

These efforts had been preceded by Mr. Budin's, with the late Jacquelin Susane; one Judge Kreiger, and also the son of Surrogate DeFalco, an attorney and friend of Mr. Budin, and by others.

Mr. Budin eventually met at Cohn's home, with a number of the above-named present, at the same time with Cohn, and with a man named Willie Levine and a friend of Levine's, name not recalled, and a number of Mr. Cohn's personal friends.

Mr. Levine was described by Mr. Cohn, as one who could explain the true nature of the problem of the non-acceptance of the Mirror at the Union Newsstands.

Levine, who is defendant Garfinkle's brother-in-law, made it clear, that normally, he, Levine, could approve any publication for sale, on the Union News stands ---- but in the case of our Mirror, which he believed could be profitable and acceptable to him, he was not free to exercise his business judgment, but that he had to bow to Garfinkle's personal dictates in that matter.

However, Roy Cohn agreed to have a talk with Garfinkle to make him change his decision.

Levine, saying Cohn's effort would be useless. Upon the departure of Levine and his friends, after a private talk with RoyCohn, Budin was told, by Cohn, that the real reason for the Mirror's rejection on the newstands of Union News Company, was the influence of the competitor NEW YORK TIRLE, and a deal made with Henry Garfinkle, AND DEFENDING NEWS Inc.

The credibility of such influence, could easily be understood, in the light of the documented fact that the Union News Company, earned over \$1 million a year in dealing with the defendant NEW YORK NEWS, INC, (Exhibit E) It also must be called to the attention of the Court, this close, shady relationship was only a continuation of the unsavory relationships which had been exposed by the Government in its suit in this very Court. 70 CIV 577. See also opinion, Bonsal, D.J., November, 1973, p. 2

We here present a statement of the various individuals who together, constitute, as thus far disclosed, the defendants in this case.

THE DEFENDANTS CAST OF CHARACTERS

The late FRANCIS M. FLYNN for 27 years, President, publisher and finally Chairman of the Board, inclined, by his own acknowledged precepts, to favor the elimination of all competition, as reported in the Daily News dated November 16, 1974 in Mr. Flynn's second-page obituary, which quoted Mr. Flynn as saying:

"I can't understand why anybody reads any other paper or why advertisers use any other publications."

* * * * * * *

JACK UNDERWOOD, circulation director of the "News" at \$75,000 a year (employment recently terminated): who had a contingent bonus, and a stock interest, in News Inc.; who professed a working ignorance of matters affecting his sole morning tabloid competitor and a complete lack of interest therein; who also contradicted one of the principal witnesses, ARCHIE GORDON, of the defendant "NEWS", whose affidavit the District Judge adopted, as affidavit the recent motion for summary interment.

Underwood admits being a Warretor of New York News, Inc.

HENRY GARFINKLE, referring among other things to the WALL STREET JOURNAL articles starting with #1 July 3, 1969 headlined as "A-ROUGH DEALER: CONTROL OF NEWSTAND DISTRIBUTION PROVIDES GARFINKLE WITH POWER OVER PUBLISHERS." Further described in that series of articles to have Mafia ties, and a special self-confessed beneficiary of extorted subsidies - 1962 through 1969 (p. 93, EBT, 10/19/73 (exhibited by Defendant NEWS to the District Judge).

In a trade publication (exhibited to the District Judge by defendant News) titled MORE, it gave description of the gangster ties of defendant Garfinkle.

* * * * * * * * * *

WILLIE LEVINE, a brother-in-law to Henry Garfinkle who is referred to in the scries of articles of the Wall Street Journal dated July 3, 190) as a man with strong-arm connections; who as an EBT witness declared himself, as a salaried employee of (Ancorp) of \$35,000 a year, but could not describe his official duties, except to repeatedly declare himself in mute form as an "executive".

* * * * * * * * * *

WILLIAM McCULLOUGH, who as "Bresident" of ANCORP, and chief executive officer of American News and Union News, etc. at an annual enlary of \$55,000, could not or would not destribe the duties of his subordinate, Willie Levitar except to repeat the formula, quote, "executive"; and who, at the same EBT sessions held recently May 15, 1975, squarely contradicted his Levitar associate, as to their joint attendance only one or two hours before the examination, at the Ancorp executive offices, in ostensible joint preparation for said examinations.

* * * * * * * * * *

ARCHIE GORDON, a truck driver, employee of the Daily News for some 40 years or less, whose activities in fraud of the plaintiff as appears in the record are elsewhere herein dictated and detailed, and of whom Mr. Garfinkle referring to truck drivers as a class, stated under oath (October 19, 1973, p. 81, EBT):

"I wouldn't trust them for as far as I can throw a safe,"

THE INTERDEPENDENT NATURE OF THE DEFENDANTS' INTERRELATED BUSINESSES, AND THE DIRTY TRICKS OF THE TRADE

The defendant corporations, under defendant Garfinkle's control, deal with wholesale distribution and circulation of all magazines, and deal with mass sales of periodicals and daily newspapers, at their 650 strategically
located newstands, and also serve some 11,000 independent
newstands, in and about the City of New York;-

The Greater Boston Distributors, a company owned by Garfinkle, covering the greater New England area in the mass distribution of periodicals, including newspapers to newstands in that area.

Manhattan News Company, an exclusive magazine and periodical distributor to all newstands in Manhattan, is a Garfinkle family-owned operation; and strangely enough, the defendant Garfinkle, at the head of the American News Company, a publically owned stock company, now part of Ancorp, had arranged with complete impunity, that that vast business of distributing magazines, should be taken over by his family.

Mr. Garfinkle testified that he arranged this vast conflict-of-interest transfer, without the slight st objection or criticism of his supposed members of his Board of Directors, of the three defendant companies; the volume of business represented thereby runs well into six figures, monthly and annually.

The Gaynor News Company, a wholesale distributor,
has been owned by the defendant "NEWS", of which Jack Underwood,
the circulation director of the New York News and a member of
its Board of Directors, was also President of Gaynor News.

The plaintiff MIRROR was also under contract with Gaynor News at a time, when plaintiff had no knowledge of the defendant NEWS ownership, of Gaynor News Company.

It is clear from the foregoing, that our ultimate sale of plaintiff's MIRROR to the newstands was dependent upon delivery media, owned by hostile individuals each of whom had his own motive, however secretly carried out, for the destruction of plaintiff MIRROR:

The magazine distributors could dictate to the newstands that they would not receive essential magazines, a large source of profit to those newstands. Thus, if the magazine distributor suggested or dictated that the particular newstand refrain from displaying or selling the plaintiff MIRROR, the MIRROR could be choked off at such source of retail sale. (Hereinafter we shall show such typical results at independent ant newstands, where objections could be heard calling the Mirror was a "communist" and "undesirable" newspaper and "was out of business".)

When my office was deluged with hundreds of phone calls, asking where the Mirror could be purchased, some of my associates and I went out into the field to investigate as to the cause of this broad-scale inability on the part of interested newspaper readers, and would be buyers of the Mirror.

I found upon interview with many newstand operators,
along with my inquiring associates, that the newstands were not
showing, displaying or selling our Mirrors, were burying them

under the counters and when asked by customers, said they had no Mirror, or in some instances, said they were not allowed to sell.

That in many instances, we found newsdealers threatened, and in fear of the loss of popular-selling magazines.

Principal such offenders was Manhattan News

(Garfinkle); Gaynor News (New York News-controlled); Great

Boston (Garfinkle).

The obvious contact man tying in all these operations was undoubtedly Willie Levine, who, under examination could not define his duties beyond calling himself an "executive" in unison with his \$55,000 a year superior; and said Levine was also described in the Wall Street Journal article as associated with strong-arm, or shady characters, or Mafia.

This brings us in direct contact with the subject of dirty tricks of the trade which became a part of the examination before trial of defendant Garfinkle, et al.

Well known dirty tricks in the trade are:

- 1. Burying papers under the counter.
- Giving preferred disphy to those in favor for money consideration or otherwise.
- Giving illegal rebates from normal price for the trade.
- 4. Giving extra copies unpaid for, in exchange for requested acts for suppression.
- Premature returns (having hidden the newspaper).
- 6. Delaying truck delivery.
- Collusive arrangements for the disappearance of bundles of newspapers

All over the City, New Jersey, in the South,
Westchester and North to Albany and Canada, came to us the
evidence of such sabotage, at a time when our newspaper had
every reason to be popularly and widely acceptable, as
aforesaid.

A principal offender in "dirty tricks" against our MIRROR was the combination of Jack Underwood of the defendant NEWS and defendant Garfinkle, whose "empire" had a gross income from the News annually of more than \$1 million from the sale of the NEWS (Exhibit 17).

(It was Garfinkle who testified that his business was not interested in money or profits,)(That he was not of any knowledge as to whether his businesses were losing or making money on the <u>Daily News</u>, but he <u>did</u> know that the <u>Mirror</u> was a source of loss to his enterprise.)

At page six of Jack Underwood's EBT, he was asked whether he had any communications at all with defendant Garfinkle. His reply was that Garfinkle telephone him and when asked by Underwood, "how's business.", Garfinkle's reply was "I have no room for the Mirror." And when asked if that was the extent of the conversation, replied nothing further was said, and he so answered repeatedly, to the same repeated question.

There can be no question that, that conversation was a code conversation, and the result of many previous conversations for such arrangements.

On the other hand, when Mr. Garfinkle was asked the same question as to his conversation or communications with Mr. Underwood, his answer was even MORE REMARKABLE.

I hadn't talked with Mr. Underwood for the past three years. "(ERT PASE)

This obvious understatement by businessmen with
large business relations was part of a consistent pattern
throughout the examinations of all of the defendants with
nesses and their counsel's covering tactics and promptings
in disclaimer of the importance of the Mirror as a
"competitor" of the Daily News; with their concern of the
Daily Mirror as a competitor, and all designed to belittle
the allegations of the complaint charging monopoly activities;
as a matter of fact, only most reluctantly did the defendants'
witnesses admit that our Mirror was a competitor."

It is also significant that, while the defendant NEWS' circulation director admitted that he had field men making reports weekly on the sales of the Mirror, the records in the files of the defendant NEWS did not contain any such records or reports, he chames.

It is unnecessary for deponent at this time to

particularize the numerous instances in the testimony of the

employees and associates of the defendant NEWS and the

defendant GARFINKLE and the defendants under his control.

Deponent will, upon challenge, produce those instances, to wit,

of their self-contradictions, their inconsistencies, other

significant admissions against interest.

PLAINTIFF'S MOTION FOR FURTHER DISCOVERY AND THE DISQUALIFICATION OF ROY COHN AS ATTORNEY FOR ANCORP The Court in its memorandum dated May 6, 1975, specifically authorized the plaintiff to "make a formal motion seeking the full measure of any relief deemed to be appropriate." Our motion duly made, included the demand for

Our motion duly made, included the demand for the enforcement of the prior Order of the Court requiring the defendant NEWS to supply us with the contract of acquisition of the old Mirror, dated October 15, 1973.

We also asked that the defendant provide us with further discovery of the examination of essential witnesses, whose testimony had not as yet been completed or given.

The Court in its opinion of June 9, 1975 seemed to have omitted a formal decision on this authorized motion, which had been fully submitted on May 27, 1975, three days before the time set for our submission of answering papers to the motion for summary judgment.

On page 6 of the June 9th opinion, the District Judge made a seemingly afterthought cursory disposition of our motion, referring to our motion as "grossly tardy and otherwise unmeritorious."

There can be no question that Roy Cohn, as we now show, had become a principal witness for the plaintiff; and we now add that he was consulted as a prospective attorney for the plaintiff to handle the prosecution of this antitrust suit, with a full disclosure of our case to him.

This same Roy Cohn, while a member of the bar, also had the presumption in this case to write a private letter to the District Judge, demanding summary judgment for his Ancorp client on that letter alone. (June 2, 1975.)

OUR CONCLUSIONS AS TO THE COMBINED AFFIDAVITS FOR THIS MOTION

- A. We submit that the District Judge, in the presence of the recusance process, had no alternative, but to suspend all deliberation on the merits, on the two sets of motions pending before him on May 29, 1975. Such was his obligation under Sectic 144 Title 28 USC, and also 455 Title 28 USC.
- B. That, just and the District Judge had declared for an extension for the trial, from June 9th to June 16th, it would seem, that a similar obligation rested on him to adjourn the dates, relative to the pending motion for summary judgment, etc.
- C. That the disposition, made by the Judge on the merits on June 9, 1975, must be viewed as a legal nullity, accordingly.
- D. That, in any event, the District Judge could not take the plaintiff's "default" for its withholding of any further responsive papers to the motion for summary judgment, when such submission would be inconsistent with plaintiff's application for his recusance.

E. Nor, for the same reason, could the Judge's self-initiated claim of a lack of prosecution by the plaintiff of its action, be asserted under such circumstances. F. In any event, there could have been no claim for lack of prosecution, since the plaintiff was being charged rather, with too intensive an effort to proceed, both with response to that motion, and with the discoveries then being sought, and for the enforcement of the Court's own order, on the defendants, (to furnish plaintiff with the ordered Contract of Acquisition, dated October 15, 1963, /A Feet). G. The Court must recognize that none of the adversaries of the plaintiff demanded any dismissal on the grounds

- G. The Court must recognize that none of the adversaries of the plaintiff demanded any dismissal on the grounds of non-prosecution; on the contrary, the history of their conduct throughout this case (except on their sigle, denical motion to dismiss for lack of prosecution in 1972) was to welcome and encourage delays; in fact, the Court's own decision of June 9, 1975 can be read to charge the plaintiff with too intense prosecution, in seeking the aforesaid further discoveries, and for the enforcement of the Court's order for discovery, by its motion returnable May 27, 1975.
- H. The Court's decision of June 9, 1975, by finding plaintiff and its counsel, "in good faith" in the exercise of applications under 144 and 455 of Title 28 USC, and rejecting adversaries' claim that we made the application only "to delay.....by any means", as a matter of law, we submit, was precluded from either taking our "default" or

JA173 dismissing it for non-diligent prosecution. The Court has punished plaintiff, instead, for exercise of that right under the two Sections. I. We submit that the administrative calendarclearing rule cited by the District Judge, could never have been intended to deny a plaintiff of due process, or to apply in the midst of prosecutive activity. J. The grant, by the District Judge, of summary judgment to the defendants, on a bar affidavit, of the attorney for the defendant "NEWS", and two accompanying affidavits (on mere collateral matter, and by one, by an individual, a truckman, described by co-defendant Garfinkle, as in any event not worthy of any belief, and by another in defendant's employ) was an unduly hasty act. K. That the grant of summary judgment on an

K. That the grant of summary judgment on an attorney's affidavit, and worse, upon an individual, curt letter of attorney, representing three of the defendants, who otherwise never herein applied for summary judgment, is further evidence of such undue haste.

L. The denial by the Court of our application for further discovery, and for enforcement of its own order, on a fundamental issue of discovery, was further evidence of unusual haste.

M. The acceptance by the Court of an attorney's affidavit, and by a bare letter from an attorney in principal support, requesting, summary judgment, is in specific violation of Rule 56(e) FRCP, covering "summary judgment":-

"Affidavits shall be made on personal knowledge, shall set forth such facts as shall be admissible in evidence, and shall show affirmatively, that the affiant is competent to testify."

While the defendants were under obligation to furnatish legal and competent evidence in support of application for summary judgment, the plaintiff on the other hand was entitled to obtain legal evidence out of the mouths of the defendants on pre-trial discovery, and should not be relegated to a chance obtainment of answers, necessary and essential to its case, from hostile witnesses on the trial, as the District Judge did at one time declare. (Obviously, a trial jury cannot be made to wait upon such confused and conflicting developments.)

WHEREFORE, we ask the Court:

- (1) That Judge Frankel withdraw, in anticipation of the within application;
- (2) That the newly assigned Judge vacate the proceedings, each and all, which took place on and after May 29, 1975;
- (3) That the Court set a new schedule of dates for the continuations of the pending discoveries and the application therefor and one for the ultimate trial, with a denial of the present joint applications for summary judgment by the defendants, and grant of the within motion for vacature.

Sworn to before me this

ROBERT W. FARRELL

24 day of June, 1975.

7

STATE OF NEW YORK)

COUNTY OF NEW YORK)

PHILIP S.BUDIN, being duly sworn deposes and page:

I was publisher of the DALLY HIRROR when it suspende.

publication.

I discussed with Cindy Adams, who wrote a colors for the DAILY MIRROR in 1971-1972, the fact that the MIRPOR as having a distribution problem with the Union down Company, a division of ANCORP, INC., a defendant in a law suit the MIRROR and scorted.

Cindy told me that she and Joey Adams were very close to
HENRY GARFINKLE and that she and Joey would try to work things out
so that the newspaper MIRROR would be able to make arrangements for
such distribution and be placed on the Union News stands.

An appointed time was arranged to meet at Poy. Cohn's house at 39 East 68th Street, in the City of New York. I was told by Cindy that Cohn was garfinkle's attorney and friend and if anyone could do this, Roy Cohn could.

Previously, Judge Kreiger and Anthony DeFalco were asked to help. They met with Garfinkle, and spoke with him on the telephone but to no avail. Others also tried to contact Garfinkle.

When I arrived at Roy Cohn's home, there was Mr. Cohn, Joey Amams, Cindy Adams, and two of Mr. Cohn's male friends. A man named Willie Levine and his friend arrived thereafter with two women.

Prior to Levine's arrival, Mr. Cohn told us that Willie Levine could tell us what the problem of the Union News Company was in not taking the MIRROR for sale on its newstands, and after we knew the reason why, how it could be solved.

After Cohn told Willie Levine, why Cohn had requested his coming to his home for this meeting, Levine replied that normally it was within his power and authority to decided what should be

or should not be on the newstands operated by ANCORPT Lies Laws Company)

But, the DAILY MIRROR was different bevone said that he thought the MIRROR should be on their stands as good pusiness judgmentmand that he himself wested in that way.

Leviae, emphatically them stated, that ANDRY ANDIARLE was responsible for the decision against the DATLY MIRWY Being sold at the Union News Company stands.

Levine further stated that he would do it for Colm, but in this case, it could not be done, because GARFITELD would not change his decision.

Cohn , then said he would talk with Garfinkle, and try and pursuade him to change his decision. Levine then said, Cohn could try but, "it was like hitting your head against a stone wall."

Levine was asked, why Garfinkle had this attitude against the MIRROR. He proceeded to give a number of reasons, one being that it was a racing paper, and another having to do with David Rosen, who was the owner of METROPOLITAN NEWS COMPANY, with whom he had some previous difficulty some time ago and whose company was now distributing the MIRROR.

Cohn then took Willie Levine aside and spoke with him privately for about five minutes. Levine and his friends then left.

Cohn returned to the group, Cindy, Joey, Cohn's two friends and myself.

Cohn then stated the real reason the MIRROR could not be put on the Union News Company stands-----was *** the NEW YORK (DAILY) NEWS.

That the "NRWS" had made a deal with Garfinkle, the result no MIRBORS ON ANY NEWSTANDS, that ANCORP, (Union News Co.) or Garfinkle controlled, or where Garfinkle could excersize his influence.

Cohn then promised Cirdy and Joey ,he would meet with Garainkle, speak with him personal , and try to make him change his
mind.

Cindy Adams then told me at a leter date, that Cohn had contacted Garfinkle, and was told not a chance, No!No! Lo!.

When that information was given to me, I show the MIRROR was in grave danger of going out of business.

When Cindy Adams arranged the meeting at Conn's Loose, with Willie Levine being present, she was promised in writing a contract to continue to write a column for the Adam MIRKOR, and that she would be paid for her services at a large salary.

Further Jody Adams got me to agree that should be given a block of stock min the DATLY MIRROR INC., it is could end the problem we were having with ANCORP. (Union Jets. Co.)

When I made this offer to Cohn, his reply was, we can talk about this later (another time).

At that meeting I also spoke to Cohn about his law firm representing the DAILY MIRROR company as its attorney, not only for the law suit that was pending, but that his firm would become general counsal for the MIRROT. We also agreed that if he accomplished the ending of our circulation problem with ANCORP, (Union News Co.) this law suit would be witndrawn as settled. Cohn said he would think about it, but first he was going to talk with Garfinkle.

Cohn was also told at that meeting, that without the MIRROR being on ANCORP'S newstands it would certainly fold.

PHILIP S.BUDIN

Sworn to before me this

27th day of June 1975

Laurence RE

No. 62-4510393 Qualified in Surface County

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR INC.,

Plaintiff.

71 CIV 1211

AFFIDAVIT OF SERVICE

-against-

HEW YORK NEWS , INC. , HARRY GARFINELE, UNION NEWS COMPARY., INC., AMERICAN NEWS COMPANY INC, and ANCORP, INC.,

Defendancs

STATE OF HIW YORK)

55. :

COUNTY OF NEW YORK)

ROBERT W. FARRELL, beding duly sworn deposes and says: That on the 17th day of June 1975, deponent served a copy, of and affinivit, NOTICE OF MOSION/returnable July 2rd, 1975 at the District Court, Southern District, Foley Square, New York, by depositing in a self stamped address ed wrapper in a United States Post office at 45th Street and Lexington Avenue M.Y.C to the following:

Townley, Updike, Cartor & Rodgars Hags. 220 Fast 42nd St.N.Y.C. Barrett G. Kreisberg Mag. 104 East 40th Street New York City, N. Y Same, Escon, Bolan & Manley Esqs, 39 Dost 68th Street, New York, M. Y

That on the 27th day of June 1975, deponent served a true copy of a Supplemental Affidavit and Affidavit of Merits upon

Townley, Updike, Carter and Rodgers Lags. 220 East 42nd St., N.Y.C Barrett G. Kreisberg Esq. 104 Eastv40th Street, New York City, N. Saxe, Bacon, Bolan & Manley Esqs 39 East 68th Street, New York Cit

by leaving true copies at each of the above attorney's office. a true copy of That on the 30th day of June, 1975, deponent served/a memorandum

Sworn to before me this 27th day of June 1975

ROBERT W.FARRELL

(1) (1) (1228



Department of State Albany

IT IS HEREBY CERTIFIED THAY THE

CERTIFICATE OF INCORPORATION

Daily Mirror, Inc.

was filed in this Department on the thirteenth day of April, 196:



Witness my hand and the official seal of the Department of State at the City of Albany this 10 th day of July, 1964

John P. Lomenzo-Secretary of State

	Class of Merchandise: No. 38 File No. R-7955
Date	of Registration: May 27, 1964 Registration Expires: May 27, 1974
	Date First Used In UNITED STATES:
	Date First Used In NEW YORK STATE: May 24, 19

WITNESS my hand and the seal of the Department of State at the City of Albany, this 27th day of May 1964.

John P. Lomenzo -

John J. Fromer, Deputy Secretary of State

Form AD 264



State of New York - Department of State Certificate of Trade-Mark Registration

I, JOHN P. LOMENZO, SECRETARY OF STATE OF THE STATE OF NEW
YORK, do hereby CERTIFY that in accordance with the application filed in this office of
the 26th day of May, , 19 64 , the TRADEMARK described
below has been duly registered in this Department pursuant to Article 2 2 of the General Busines
Law, in behalf of DAILY MIRROR INC. (a N.Y. corp.)
25 West 54th St., New York, New York
Description of Trademark and Description of Goods on Which the Trademark is Used

"DAILY MIRROR"

Used in connection with a Daily Newspaper Publication.

W ENCOMESHING THE CHIEF MICH PAID IN MALE MANAGEM OF THE MICH CANAGE	a Accerto		
TOTAL OF INVOICES	DAY THE CORDEROR	aity mine le, Inc.	10/13/19/10 1462 C \$ 263,000 \$
AMOUNT OF CHECK	THE SUN 263	5 C C DOLS C C CTS	Dollars
CHELS	SEA 111 JOHN ST. AT PEARL S	Mar Stape	
	o1:026004	621: 035m0197m8m	



THE CITY OF NEW YORK OFFICE OF THE MAYOR NEW YORK, N.Y. 10007

December 22, 1971

Mr. R. W. Farrell
President
The Daily Mirror
41-17 - 27th Street
Long Island City, N.Y. 11101

Dear Mr. Farrell:

Daily Mirror. Congratulations to the New York

It's a happy day for your paper and for our city, which has benefited from the addition of a vigorous new voice in the field of journalism.

Moreover, your survival in an era when the trend is for publications to collapse is testimony to your courage, dedication and know-how.

Best wishes for the future.

Sincerely yours,

onn V. Lindsay Mayor JA184

FRANCIS J. COUGHLIN

ATTORNEY AT LAW

132 EAST 85TH STREET

NEW YORK N. Y. 10028

TEL. (212) 288-2097

(212) 288-2098

January II, 1971

Robert Farrell, Esq.
Rothblatt and Rothblatt Esqs.
232 West End Avenue
New York N.Y. 10023

Dear Bob:

Congratulations on your new venture. Hope you are successful.

I have tried to get a copy of the Mirror but none of the news stands around here (86th Street) seem to have it. They seem upset that they can't get the paper. Apparently you have struck ready market, if you can produce it.

All the best.

Very truly yours,

COUGHLIN

FJC/mt

THE GALLAGHER REPORT

JA185

30 PARK AVENUE, NEW YORK, N.Y. 10017 MU 9-9000

A Confidential Letter
to Advertising, Marketing,
and Management Executives
Edited and Published
by Bernard P. Gallagher

Dear Sir:

New York. March 24, 1965

U.S. MOVES AGAINST NEWSPAPERS. Justice Department instituted four antitrust suits in past year. More to come. Publishers worried. Advertisers interested. Will affect ad rates. Change entire financial outlook of newspaper publishing.

Cases pending. Justice Department: 1) Wants E.W. Scripps to rid itself of stock of Cincinnati Enquirer, because it owns Cincinnati's other evening paper, Times Star.

2) Accuses Lima News, Freedom Newspapers of driving Lima Citizen out of business by intentionally operating News at a loss. 3) Objects to consolidation of Tucson Daily Citizen and Arizona Daily Star. Citizen trying to acquire stock of Star. Two papers operate as unit in everything except news and editorial departments. 4) Demands Times Mirror divest itself of controlling interest in San Bernardino's Evening Telegram, Morning Sun, Sunday Sun-Telegraph, because Sun papers are Los Angeles Times' chief competitions in San Bernardino area.

Change of attitude. Justice Department formerly tolerant of newspaper monopolies on grounds of economic hardship. Permitted Sam Newhouse, owner of New Orleans Times-Picayune, to buy competing Item because there were no other bidders. Hardship illusion fostered by publicity given newspaper foldings, strikes, high operating costs, competition from other news media (radio, tv). Justice Department now realizes newspaper business far from depressed industry. Some papers mismanaged; others fail to change with times; but great majority make money. Gross revenue for all U.S. newspapers \$6 billion. Up 6.7% per year since 1947. Will hit \$10 billion by 1975. Ad revenue last year totaled \$4.1 billion. 8% over 1963. Paid circulation now 400 million. Pressure against newspaper monopoly strong in Washington. Congress disturbed that 1,422 cities are one-publisher towns, more than 95% of gaily-newspaper cities. In 10 years, cities with competing newspapers have dropped from 106 to 66. 654 U.S. dailies, more than 40%, are controlled by 130 chains. Federal Communications Commission tries to keep radio and tv stations out of newspaper control.

Outlook. New U.S. Attorney General Nick Katzenbach will pick his spots. Concentrate on safeguarding competition where it now exists, breaking up single ownership where two papers are still published. Most publishers in one-paper towns safe for time being. Now under study: 1) New York City, to determine whether Daily News was responsible for collapse of Mirror; whether N.Y. Times uses similar tactics unfairly against herald Tribune. 2) San Francisco, to prevent any agreement between Hearst's Examiner and the Chronicle that might result in situation similar to Los Angeles when Hearst merged morning Examiner with evening Herald. Gave morning field to Norman Chandler's hos Angeles Times. 3) Milwaukee, regarding feasibility of splitting Journal and Sentinel (purchased by Journal in 1962). 4) El Paso, where Herald-Post and Times have joint business operation similar to that under Justice Department attack in Tucson.

Next-step: Katzenbach will re-examine established monopolies such as Sam Newhouse properties in Syracuse and New Orleans, Hearst's in Albany, N.Y. Major newspaper publishers should follow example of Times Mirror's Norman Chandler, stress diversification.

1965. The Gallagher Report, Inc. Material may not be reproduced or photocopied in any form without permission.

Sept. 13, 1971 flear sir, the best paper around, But the trouble in getting it Her here in Jeraly in Hawthorne new Jersey half the time the guy don't have it in any of the stores of to not leave them. This has happened quet often. and I bilet Secause I like your poper, and I like to play that Post Game andrew Shane

* NEW YORK]

JA187

THE WEEKLY GUIDE TO NEW YORK . 101 WEST 57th STREET, Suite 304, NEW YORK, N. Y. 10019 . 586-7120

April 30, 1971.

Dear Bob -

I've encountered considerable, even inordinate difficulty in purchasing the Daily Mirror. The paper isn't properly displayed; the pile either is hidden under other newspapers or obscured by the pornographic or weekly foreign press/magazines.

The present production of the Daily Mirror is an ofinterest daily and deserves bear treatment than is
accorded by most of the newsstands with which I am
personally acquainted, e.g., the popular stand on 3
and Madison doesn't carry it; it is buried under stacks
of other periodicals in Tudor City (the address, I believe,
is 25); it is also entombed at the Lex. and 51 Street
stand; a hunting expedition must be organized to find one
in mid-town Broadway; if you dig far enuf, you'll come
aeross the Mirror in the candy-stationery stores on Queens
Blvd. and 67 Ave., Forest Hills; sometimes I see one at
57 and 7.

I like the new version of the old rag. You have a star-studded array of byliners who'd be bought if the public were aware that they were lighting up a bright and breezy daily.

Sidepely

Irv Cahn

C/kg

DATROLMEN'S BENEVOLENT ASSOCIATION

OF THE CITY OF NEW YORK, INCORPORATED 250 BROADWAY . NEW YORK, N. Y. 10007

June 25, 19/1

(212) 233-5531

FDWARD J. KIERNAN-President-110th Pct.

ROBERT M. McKIERNAN 1st Vice President-10th Pet.

.....

FRANCIS J. ROONEY
2nd Vice President—23rd Pct.

MICHAEL S. RICHTER

NICHOLAS L CHIARKAS
Recarding Secretary-13th Pat.

PETER P. RECCHIA
Financial Secretary—24th Pct.

JOSEPH R. FERRANTE Financial Secretary-60th Pct.

BURTON S. BORKAN
Finencial Secretary-70th Pct.

JAMES J. DISKIN
Financial Secretary-26th Pct.

JOSEPH L. MANGINELLI Financial Secretary-61st Pct.

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Firmeial Secretary-1 3rd Pct.

MALACHY T. HIGGINS
Financial Secretary-42nd Pct.

OTTO G. PETERS
Trustee: Brooklyn North-Sith Pet.

MICHAEL P. McDONOUGH

Frustee: Richmond and Lower
Manhettan—120th Pct.

WALTER C. DONOVAN
Trustee: Manhattan North-28th Pct.

JAMES F. KEEGAN
Trustee: Brooklyn South-76th Pct.

MICHAEL DeMARIA
Trustees Manhattan South—9th Pct.

THOMAS A. VELOTTI Trustee: Bronx-Mey. Pet. #1

EJK/sk

JOHN ALIGHIERI Trustee: Queens-111th Pct.

VINCENT J. DOUGHERTY
Sergeant-at-Arms-79th Pct.

Editor

Daily Mirror New York, N.Y.

Dear Sir:

I wish to take this opportunity of thanking you for the editorial which appeared in your June 9th edition pertaining to my election as President of the PBA.

Your very kind words were read with much appreciation on my part.

Sincerely,

Edward J. Kiernan

President

24 MARCH 1971

JEAR MR. FARRELL:

I WAS SO IMPRESSED WITH YOUR COLORFUL GREEN MASTHEAD ON ST. PATRICKS DAY, THAT I WALKED FROM OFFICE AT NBC (I WOULL FOR THE "TODAY" SHOW) ALL THE WAY TO W, 425 TO PURCHASE IS ADDITIONAL COPIES. NOME OF THE NEWSSTAWDS AT TROCKEFELLER CENTRE CARRY THE DAILY MIRROR, THIS THE REASON FOIL MY LONG WALK. I PASSED THE COPIES OUT TO THE "TODAY" STAFF (WRITELS, PRODUCEL, ETC.) MANY OF THEN DIDN'T EVEN HAOW YOU EXISTED!! BEING A DAILY MIRROW FAW, FEET GOOD THAT I HAD INTRODUCED "OUR" FINE NEWSPAPEL TO 'A FEW MORE NEW YORKERS. BUT IN SPITE OF MY EVTHUSIAM, I DO HAVE A FEW GRIPES. ONE IS THAT YOU DON'T CARRY "PEAWATS" I KNOW YOU HAVE MANY OTHER COMIC STRIPS, BUT CHARLIE Brown & Co. ARE TSTTIRELY DIFFELENT FROM ALL OF THAT OTHER COMIL TRIVIA. IT INDEFO A SHAME THAT AMELICA'S MOST POPULAR COMIZ STRUP IS NOT CANCIED BY NOT A SINGUE MATOR N. Y. MORNING PAPEL. 1 TREALLY HOPE YOU MAKE A TREAK EFFOLT TO ACQUIRE "FEAVUTS! IT TEALLY IS PART OF TODAY AS YOU KNOW.

THE OTHER GRIPE IS HOUR SPORTS SCORES, 14190 LEAGUE STANDINGS, ARE USUALLY ALWAYS TWO DAYS OLD. YOU APPARENTLY HAVE A VIEW EARLY DEADLINE. WHEN I GET UP FRIDAY MORNING AND TREAD MY DAILY MIRROR COPY, I WANT TO TREAD THURSDAMS SCORES, NOT WEONESDAM'S. THIS IS IMPORTANT TO WE SPORTS "NUTS."

GODD LUCK WITH YOU SUIT AGAINST THOSE WHO WOULD LOVE TO SEE YOU OUT OF BUSINESS. I WOULD SAY THAT MOST NEW YOU'VE ARE GLAD THAT YOU'VE HELE. DON'T GIVE UP NOW, AND GIVE THE N.Y. DAILY NEWS HELL! I ONLY WISH THERE WAS MORE I COULD DO TO FURTHER INSURE YOU'L SURVIVAL. I GIVE THE NEWSTAWDS HELL AGONT NOT CARRYING YOUR COPY, BUT THEY SEEM TO LAUGH YOU OFF LIKE CRITICS USED TO OF THE OUD AFTL! I HOPE YOU ACCOMPLISH WHAT THE AFT DID IN THE LATE GO'S THOUGH, AND MAKE THEM EAT THEIR WORLDS.

IF you NEED A FRIEND OIL CONTROL AT N'BC NEWS, PLEASE DO NOT HESITATE
TO CALL ON ME. I'M NO EXECUTIVE, BUT DO HOLD A RESPONSIBLE WRITING POSITION IN INFORMATION SERVICES. HOPE TO HEAR FROM YOU SIL. TREGAMOS, DOUG GUINARD

WRITERS NEWSLETTER SUPPLEMENT

- 2 -

November 15, 1971

Bartell's mag area and will henceforth function as V.P. and Marketing Dir. of both the mag. and book divisions. He will direct the M-B field force and assume all responsibilities with wholesalers. Al Rogliano says these appointments made by Al Traina are made with only one goal in sight - more sales! We know Lou and Frank will receive your congrats and cooperation!

No wonder Kable and Pinnacle gave that big party for Pinnacle's "Group Sex Scene" - the book's selling in Wash., D.C. at the rate of 4,000 a week, Johnny Hayes says - now you know what govt. employees must be doing in their free time - reading about 'it' - ha!... Incidentally, Kable is opening its own new building in L.A. - 16,000 st. feet to house its Motor Cycle Guide operation and the Kable pub'g operations and its dist'n operations thru DICK BUR-DETTE...Glad to say that after just a couple of weeks, MARTIN (NAI-world Pub'g) LEVIN has now returned to his V.P. duties and everyone is delighted ... JOE COSTA, Lancer's Promotion Mgr., is the only person we've met recently who reminds us of Al Rogliano - a darling !... Ocops! We nearly forgot to say that whiskers and all, WAI' ER ZACHARIUS was charming to us at the Erandei Affair - why not? He and partner Irwin Stein expect our Birth Defects book (out in January) to hit the tops in sales, thanks to G B McCombs' Curtis sales staff, and they just invested a lot of moolah in another book for us to write by September!... We hate to sound so monotonous about one outfit (we told Al Traina we're going to start charging ad rates to him and Kable when we use more than 3 items per issue), but proof of the long-term plans for M-B Books is the fact that they're already contracted for one full page of ad'g a month in Bestsellers for four years - in fact, they're buying premium space, the second cover, at a whopping big price! ... Interesting NY Times business page item: "Roscoe L. Fawcett, Jr. has joined Tinker Dodge & Delano as a vice president" - that's an ad agency, we believe ... The Hearst syndicate has won an injunction in Brooklyn Federal Court against an outfit called "Little Dirty Comics" which actually copied for pub'n their own comics in sex situations and blurbed on the cover as "a fully illustrated socio sex study - a nostalgic return to an era when comic strip heros became counterfeit sex studs and boggled the eyes and imagination of every American schoolboy in the 30's and 40's." The cover also carries the seal of the "Socio Library Paperback Books" and the price of the book is - gulp! - \$4.75. So you're herewith warned not to let anyone talk you into distributing these without doubt our wholesalers would... Former industry circulates lawyer, BOB PARRELL, seems to be succeeding as pub'r of the new "NY Mirror" - and we wish he'd do his occasional columns regularly - we're delighted he's got CINDY ADAMS" column, too! ... Now industry address for George Mareum, Sr. and Jr. s Tri-county News at 1776 West Main Street, Santa Maria, Calif. 93454...Hear tell - slump in/fan mag sales...PDC distributing some great titles these days - their Baseball Digest, for instance, has great sports fan appeal, even in winter when baseball is kaput!, and their new one-shot, Consumer's Guide Auto 1972 Best Buys for \$1.50 is a guaranteed best seller for PDC - and wholesalers!...Occasionally, there's something around that's "daughty but nice," and adults with a proper perspective cannot be offended if they keep it to show only to adult friends - we're talking about Sirkay's "The Mating Game" 1972 calendar, with "art" work from the artist who created the original maidens - if you den't howl at this, then you're even more of a prude than we are, and we enjoyed it like crazy - which is what those poses are!...

GEORGE HUNTINGTON hs the new Sales Prom. Director of Harst's Town & County, which reminds us that the Hearst contingent was out in full force for Al Rachoi at the Brandeis affair - BUNNY & JOHN MILLER, MR. AND MRS. RICHARD DEEMS, ROSEMARIE & BILL CAMPBELL, MR. AND MRS. JACK MCKNIGHT - such nice people to be around ... Pierce News is making news all over the lot again - made a lot of personnel switches we haven't room for in this issue (read them in L-O1), but bought two more agencies - Beaumont, Texas from John Kroeger and Associates, with Alfred J. Martin, one of the former owners remaining as mgr. (and believe it or not, his nickname is "June" for some reason); and Pierce - (Allen and Mark Molasky) bought the Lake Charles, La. agency from BOB ELAM , and the industry is buzzing with curiosity about the Molaskys' retail plans, also ... Hot on the heels of the big gains in ad'g & circ'n at Penthouse sent us by Mike Andrews, we got the news that Playboy's new sales and ad figures are so astronomical, who has room for them? ... At this writing, we're preparing to be with BUD & WILMA MESSING for lunch on Sat. the 13th, in NYC to forget the fire that burned down their home. We had their address wrong - for the next few months their home will be at #2 Ladue Acres, St. Louis, Mo. 63124, but Bud can always be reached at World Color Press, where he presidents... For those who ask what court decided on that 65% 2d class mailing, it was the U.S. Supreme Court, which means it's a final decision. Aren't we nice to knock ourselves to find this out for you??

my. 370 A192 nov. 30,197 United these 220 East 42 19 Ht ny 10017

Dear Lis: The atached notice appeared in the narhurele Poper- with no mailing address. Will you place found to me in addressed starged enculoge address where mail may he sent.

traces truly.

Fred Evan

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ns and found

massive resumption of d and Drug lumber when e Piver were w fish taken ource was he board in mercury y plant at Olin Plant considered created by the departure of some great newspapers." He said he hoped to attract some of the 900,000 readers of the old New York Mirror, published in 1963 by vacuum and paper was designed to fill the

drama and film critics, would be announced shortly. The name of the editor, as wellas been named. Farrell said t No editor of the paper has Missions for repu Singapon He saw ing inflo

Ismai

Board reported e Sircam Polluw levels below federal stan-Thursday.

In making the an-nouncement at the Overseas in the future, Farrell said. Monday through Friday, A weekend edition will be added as well as 15 comic strips Childs and William S. White, Jim m y Cannon, columns for 10 cents. and 100,000. paper will paper Jim publish Marquis Bishop.

ress Club, Farrell said the need Film Sing Mosk Lad

a press run of between 50,000 in five columns and will have edition will have 32 pages set publisher. publication in New York City newspaper, will begin Mirror a hew morning tabloid New York (UPI)-The Dally It will be sold

mount years they all know me, so fam ally beginning any emtials Ille them all bolt tean hot understand it Ithought of writing before 9. distite but received. Your boules & very fine Inion Waiter printelier and I Lugary Best Backerick Herry Toucher court Bishop and g Best of kuch forms denicile Séptimber twenglieux. P.A. Loued, I frathing Camin

The Foreign Editor,
Daily Mirror,
New York.

Dear Sir,

27th February, 1971.

20-21 Salma Manzil,

Habib Ahmed Dagia, MA(Jour), LLB, FFCS,

Munilal Vias Road;

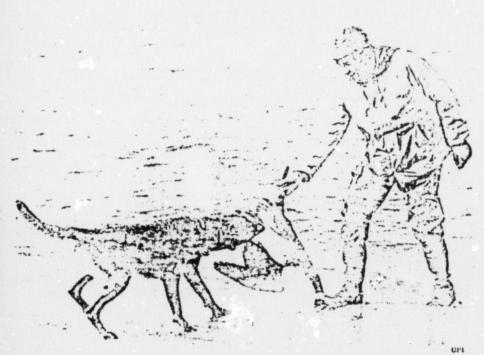
Ranchore Line, Karachi 1 (Sind)

of particular interest to your discerning readers at home and overseas. Having my base at Karachi, the hub of sociu-political and cultural activities, I am pleased to intro-I understand you need a Correspondent in Pakistan to cover newsy events duce myself as an old journalist with over 10 years of professional experience at my

University qualification of M.A. in JOURNALISM and LL.B. together with my professional memberships of the Faculty of Secretaries, Toland, the International Corporation of Secretaries, Australia and the Institute of Journalists, London, would serve as a sound base for am my journalistic writing.

Sketch of London, in Pakistan for their political coverage and regarding of hard type Presently I am working as Assistant Editor cum Publisher of Science and Industry. also representing quite a few local as well as foreign papers including the Daily for 7 years, as also Feature Editor of Watan Daily for a considerably long time. I have worked as Special Correspondent of the Fakistan Observer,

I am sure my coverage of international news and events slanted to meet the intellectual demands of your esteemed readership will greatly benefit both of us.



Hunter Muskie on Chesapeake Bay: The geese were starving

Admittedly, his chief concers as an environmentalist are air and water—but does that make it all right for Edmund Muskie to blast birds out of the skies? The Maine senator and Democratic Presidential hopeful received several letters reising that question after news photos revealed him as a triumphant goose hunter on Chesapeake Bay. One of his staff members pointed out that Maryland's Eastern Shore happens to be overstocked with geese this season. "He won't shoot deer, which are scarce," said Muskie's aide, "but there's nothing heartless about shooting a few geese when they are starving to death anyway."

Her mother, father and sister are all authors at one stage or another, and now Luci Johnson Nugent, 23, has taken pen in hand. The result is a 5,000-word memoir that may be published as a book after appearing in a forthcoming issue of The Ladies' Home Journal. Tentative title: "LBJ's Best Friend: The Untold Story of a Man and His Dog." The four-footed hero is Yuki, a stray pup that Luci brought into the household while her father was President. "This is the story of the most important family in this country adopting a waif in dog form, a total mongrel," says Ladies' Home Journal editor John Mack Carter. "It's really the story of how Yuki won his way into the heart of America's First Family.

Who should be involved in a squabbly divorce case in Orange County, Calif., but Murray Chotiner, 61, the President's trusted political adviser. He is acting as his own lawyer in a cross-action against his third wife. Mimi. 44, who says she intends to write a book about their five

years together. One tidbit will be "how he liked to laughingly refer to himself as Nixon's political hatchet man," Minustold reporters in a courthouse corridor, with her husband pacing grimly in the background. The President promised Chotiner after the 1965 campaign that he'd appoint him Republican National Chainman if Rogers Morton ever left the job," said Mimi. "I hopey this trouble blows him right out of it."

Whenever a U.S. senator wants an errand done, he just snaps his fingers and a boy will come running—or possibly a girl, if Sen Jacob K. Javits has his way. The New York Republican has bowed to women's liberation by appointing the Senate's first lemale page, subject to the expected approval of the Rules Committee. "There has been considerable head scratching about it," said Javits, "but I think the attitude of my colleagues can best be described as 'nobody can think of a reason why not." Mis appointee is Paulette Desell, 16, a tonstituent from Schenectady, N.Y., whose family is temporarily living in suburban Washington. Is she a good runner? "Not" admitted Paulette, "but I'm a fast walker."

If there's an award to anyone as best sport of the year, how about John D. Rockefeller 3rd? The 64-year-old philanthropist visited Hampshire College expecting to hear that the Massachusetts school and four neighboring colleges would jointly accept \$25,000 that he had offered for a student-run study of the local environment. He got a contrary clue in the lobby of the meeting hall, where a guerilla troupe put on a skit depicting him as an imperialist. "Good

show," chuckled John D. Then came an announcement that his grant was being tabled while a committee of students considered "serious questions" about the advisability of accepting Rocketeller's gift. With that, the would-be benefactor praised the "spirit and independence" of those who had rebuffed him. "I'm pleased at your decision," he said. "The door is open if you want to come back, and I will understand if you don't."

"Boycott lettuce," wrote Ethel Kennedy, 42, in the guest book of a San Francisco restaurant. On the next line, however, another member of her party scribbled "Buy lettuce," and the senti-ment was just as sharply divided next day when Ethel made an appearance 100 miles south in California's "salad bowl." She turned up in Salinas to show support for farm workers' leader Cesar Chavez, 43, who was serving an indefinite sentence for defying an injunction against a lettuce boycott. The widow of Sen. Robert F. Kennedy visited Chavez in the Monterey County Jail and was warmly welcomed by a throng of his followers, whom she joined at a candlelight Mass in a nearby parking lot. Across the street, a smaller band of anti-Chavez demonstrators booed, chanted "Ethel go home" and hoisted placards reading "Carpetbagger," "Chappaquiddick-Now Salinas" and "Reds Lettuce Alone"

Attention, Mr. and Mrs. North America and all the ships at sea: there will soon be a Daily Mirror in New York again, Walter Winchell and all. Independent publisher Robert W. Farrell plans to bring out a new version of the defunct Hearst tabloid in January, with three Broadway columns a week by the man who invented that form of journalism—and who has become restless after a mere two years of retirement. "I got tired of putting around on the putting green," he said. Though the raspy Winchell voice has faded to a whisper at 73, he brushed off rumors of failing health by saying, "I had a tumor removed, but I bounced back and gained 25 pounds."



Winchell: The putts were boring

Daily Mail

TEL. (212) 246-6535

50 ROCKEFELLER PLAZA NEW YORK, N. Y. 10020

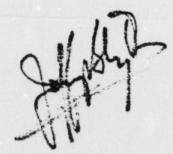
90 Riverside Drive New York 19924

Dec l 1970

Dear Mr Farrell:

I thought you might like to see the enclosed from the UK Press Gazette - our equivalent in London to Editor and Publisher.

Best wishes,



Jeffrey slyth.

DEAR SIR PLEASE SEND REPRESENTATIVE

OR SALESMAN TO

NEWSTAND

NEWSTAND

TAVE 8 33 ST C 10001

FRIST OF GRAPHING UNIVERSE

TO DEZ IN CIPIES OF DAILY MIRROR

APPROXIS

YOUR TAPER IS WANTED AT
SONOWS STANDS... NEWARK PENNS
STATION AND THRU OUT UNIONS
COUNTY... ID LIKE TO BE SO-CE
CHEEK ME OUT

MEMO)

JA199

Phone: (212) 265-1316

Billy Glason

NEW YORK, N. Y. 10019

12-4-71 DIT!why is it so difficult to obtain the MIRROR anciend here he cigar stores at Than + 54. A pt. Cooth & Hem) didn't how a coper of todaip (Sat.) seither did the Comerican or the Hang at 50th St. Whatis the matter m. M. your circulation or deliver? Please send me Seit 12/4 andosed 204 jortaje Hauch You

Milly Tenson Alud me a subscription Nate Card A Specit for a photo willym are me a break as at painer? Comedians + purvlyor of Cornely Sin

Hate of to a Smit

New's Paper the Dail, Minor

Where Con & buy it in the

Scronters - Wilker-Barre, Denne

area?

Sood Link

A rept & Frank &.

Dept 27,1971 134, 3 nd an-Hawkorneng Dear Sir, For some reason ar other we can't secon to get the Daily morrale Such day over here in Hawthama num Jirsen In one place The store ovener thought you people had gone out of bussinese non that is from bool the thing is

I have belched Jefons your poper in the feet one, and lots of us play the Post Sami and know in the hell Can we play it if that gru, don't delivery them Ahrlie some up, Lind out why we laid got the frepor? dencery Shane

Maurine Cax

155 E. 52ND ST. 3E NEW YORK . NEW YORK 10022

Tel: 593-3114

TO:

EDITOR: DALLY MIRROR

At this news stand (on 3rd Ave. near 53rd St. East side of street) I have to ask for THE MIRROR?

Is it because they are in short supply - or just do not want to show it along with other newspapers (and smut sheets).

Or perhaps it interferes with sales of MORNING TELEGRAPH - since you do print good racing data.

Sincerely,

(Ima) 71. B. Cox

UP AGAIN IN NOVEMBER 1962!

Consecutive Months of

Daily Circulation Gains

Average Daily Circulation for Six Months Ended Sept. 30, 1932

November 1962 was the fourth consecutive month of gains in SUNDAY MIRROR circulation.

Add another month to the impressive record of New. York Mirror daily circulation gains. November 1962 was the 25th month in a row. The November 5-day average was up more than 42,000 over a year ago.

NEW YORK MIRROR

PROJECTED CASH FLOW BASED ON SIX DAY WEEK JULY 1, 1971 - JUNE 30, 1972

		July 1971 .	Aug. 1971 4 Weeks	Sept. 1971 5 Weeks	Oct. 1971 4 Weeks	Nov. 1971 4 Weeks	Dec. 1971 5 Weeks	Jan. 1972 4 Weeks	Feb. 1972 4 Weeks	March 1972 5 Weeks	April 1972 4 Wceks	Nay 1972 4 Weeks	June 1972 5 Weeks
	CIRCULATION - Papers	600 M	600 M	750 M	1,200 M	1,440 M	2,100 M	1,920 M	2,160 M	3,000 M	3,000 K	3,000 M	3,750 E
HANG WANGER WEST	REVINUE Circulation	\$ 42,000 15,000	\$ 42,000 15,000	\$ 52,500 15,000	\$ 84,000 22,500	\$100,800	\$147,000 30,000	\$134,400	\$151,200 40,000	\$210,000 45,000	\$210,000	\$210,000	\$262,500
	Advertising TOTAL REVENUE	\$ 57,000	\$ 57,000	\$ 67,500	\$106,500	\$125,800	\$177,000	\$169,400	\$191,200	\$255,000	\$265,000	\$265,000	\$317,500
	COSTS AND EXPENSES Editorial and Composition Printing	\$ 33,600 36,000 8,000	\$ 33,600 19,200 8,000	\$ 33,600 24,000 8,000	\$.33,600 38,400 8,000	\$ 36,000 46,080 8,000	\$ 36,000 67,200 8,000	\$ 36,000 61,440 8,000	\$ 36,000 69,120 8,000	96,000 96,000 8,000	\$ 36,000 96,000 8,000	\$ 36,000 96,000 8,000	\$ 36,000 120,000 8,000
	General and Administrative TOTAL COSTS AND EXPENSES	\$ 77,600	\$ 60,800	\$ 65,600	\$ 80,000	\$ 90,080	\$111,200	\$105,440	\$113,120	\$140,000	\$140,000	\$140,000	\$164,000
	MONTHLY OPERATING PROPIT OR (LOSS)	\$ (20,600)	\$(3,800)	\$ 1,900	\$ 26,500	\$ 35,720	\$ 65,800	\$ 63,960	\$ 78,080	\$115,000	\$125,000	\$125,000	\$153,500
	CUMULATIVE OPERATING PROFIT CR (LOSS)		\$ (24,400)	\$(22,500	\$ 4,000	\$ 39,720	\$105,520	\$169,480	\$247,560	\$362,560	\$487,560	\$612,560	\$766,060

I. Employment History

First employed (shape) - February 23, 1964
Regular situation holder - June 7, 1966
Still Employed as chauffeur

II. Remuneration

. Remu	neration				Extra (Bonus,	Reimbursement	Reimbursement State Benefit:
Year	Gross Pay	Regular Pay	Vacation	Overtime	Incentive and Contest Awards)	Benefits	
1964 1965 1966 1967 1969 1970 1971 1972 1973*	\$ 9,423.49 \$10,928.25 \$ 9,871.65 \$ 9,980.15 \$ 9,152.61 \$ 8,058.52 \$ 1,873.35 \$10,289.56 \$15,656.81 \$14,309.52	\$ 6,544.68 \$ 5,941.37 \$ 5,997.44 \$ 1,093.86 \$ 7,008.31 \$10,899.71	\$ 485.78 \$ 566.64 \$ 600.18 \$ 606.40 \$ 643.60 \$1,711.28 \$ 971.61 \$ 456.20	\$2,535.42 \$2,767.45 \$1,963.98 \$ 938.65 \$ 69.35 \$ 967.78 \$3,314.99	\$ 67.84 \$ 42.86 \$ 38.01 \$352.50 \$ 79.71 \$470.50	\$517.64 \$440.82 \$357.64 \$521.98	\$598.00 \$480.00

^{*} Through week ending September 25, 1973

PLTF.

FOR EXH S FOR

D. GRUMBERG

The News - Amounts Billed to Union News Company

1971

Week	Ending	Amount	Week Ending	Amount
Jan.	3	\$20,826.98	July 4	\$26,331.48
	10	25,631.06	11	20,681.43
	17	25,490.18	18	19,053.70
	24	25,574.10	25	19,665.93
	31	24,886.53	Aug. 1	21,699.34
Feb.	7	30,145.47	8	19,854.68
	14	26,341.50	15	19,640.51
	21	23,893.61	22	19,969.12
	28	22,543.42	29	23,791.77
Mar.	7	25,637.79	Sept. 5	19,696.46
	14	26,184.84	12	21,134.28
	21	26,194.46	19	19,879.93
	28	26,284.45	26	18,806.90
Apr.	4	25,898.79	Oct. 3	23,382.84
	11	22,496.30	10	26,429.17
	18	27,158.42	17	21,109.14
	25	25,750.62	24	21,832.42
May	2 9	25,372.94	- 31	23,359.73
	9	22,121.97	Nov. 7	23,099.62
	16	28,963.63	1.4	25,770.14
	23	21,787.07	21	24,858.48
	30	26,970.69	28	20,332.75
June	6	23,704.55	Dec. 5	22,207.38
	13	20,103.29	12	23,267.18
	20	24,716.45	19	25,781.56
	27	24,409.81	26	21,471.95

The News - Amounts Billed to Union News Company

1970

Week Ending	Amount	Week Ending	Amount
Jan. 4	\$19,297.81	July 5	\$20,490.62
11	23,741,94	12	20,621.87
1.8	23,439.42	19	20,892.28
25	25,149.32	26	24,006.02
Feb. 1	22,761.79	Aug. 2	22,961.28
	24,299.41	9	24,121.71
15	24,073.87	16	22,444.87
22	25,107.40	23	21,268.83
Mar. 1 8 15	22,475.35	30	24,138.73
8	24,373.35	Sept. 6	23,195.99
15	23,227.46	13	22,922.45
22	25,302.07	20	24,307.98
29	21,522.55	27	26,329.60
Apr. 5	23,564.51	Oct. 4	22,962.80
12	24,503.60	11	23,762.78
19	23,351.02	18	25,752.07
26	23,859.87	25	28,319.55
May 3	23,510.57	Nov. 1	25,316.26
10	23,371.13	8	25,551.00
17	23,305.77	15	26,098.08
24	22,628.99	22	24,614.88
31	24,399.69	29	21,275.70
June 7	21,036.29	Dec. 6	24,785.27
14	21,865.70	13	26,551.06
21	22,180.86	20	27,202.76
28	21,202.84	27	19,521.36

LAWYER'S COMEBACK GIVES ROERIM REHTONA KROY WELL

TER a absence of nearly seven Mirror back on the New York news stantis again next week. Only it will be under new management.

The old New York Daily Mirrorrival to the NY Daily News--was part of the Hearst newspaper empire.

Now its title, according to American newspaper lawyers, is in the public domain. And a new company is planning to revive it.

The new paper, which has started re-crulting staff, will be printed by offset at a plant in Long Islam. City and trucked into New York.

Man behind the new venture is former

into New York.

Man behind the new venture is former Brooklyn Eagle newsman Robert Ferrell, who for several years has worked as a lawyer but is now returning, he claims, to his old love, newspapers.

So far he has a staff of 20 enthusiastic young newspapermen. He will also be running columns by such well-known American writers as Jim Bishop, Bennett Cerf, Henry I. Taylor and Marquis Childs, many of whom have not had a New York outlet since the death of the old Mirror and the ill-fated World-Journal-Tribune.

Thor many New York newsmen befinancial suicide to try to break in how securely dominated by the New York Times and the Daily News, the publisher of the new NY Mirror is optimistic about his chances.

"If we are a success we will have a go at the Sunday market. And after that maybe even the evening paper field," he said confidently.



MORLEY SAFER, who has been in charge of the CPS bureau in London for the past three years, is returning to New York.

He will replace Harry Reasoner

He will replace Harry Reasoner (U." Press Gazette No. 256) who is taking a new 200,000 dollar-a-year lob as top newsman at the rival ABC

job as top newsman at the rival ABC network.

Mr. Safer, who during his spell in London covered the Nigerian civil wer, the Russian invasion of Czechoslovakia and the troubles in Northern Ireland, will co-host the CBS network's fortnightly news magazine Sixty Minutes.

A Black fines

FOR publishing a statement by an official of the local militant Black Berets, the owners of Bermuda's Royal Gazette have been fined the equivalent of £2,000 for contempt of court.

Assistant editor Gordon Robinson, who was in charge of the paper at the time, was fined £500—or, alternatively, three months in prison.

The offending story (U.K. Press Gazette, No. 225) was a follow-up to the jailing of one of the island colony's more notorious Black Beret members for 'disturbing the peace' by burning a Union Jack.

The day after his sentencing the Black Berets, who have been accused of fomenting some of the recent racial trouble on the island, described the court as a 'fascist kanearoo circus.'

kangaroo circus.

The Royal Gazette ran the statement in a brief story on an inside page. It nevertheless aroused the ire of the Bermuda Government.

muda Government.
Passing sentence on the Gazette's own-



DATIEILINIE AMERICA

ers and its assistant editor, the island's chief justice declared: "It was a disgrace-ful and scurribus attack on a court of summary justice."

He added: "It is one thing to criticise, but another to hurl abuse."

Two local radio stations, which also carried the statement in news broadcasts, and their news editors, were also heavily

The Black Beret messenger who deli-vered the statement to the Royal Gazette and the radio stations was sent to prison for six months.

* Source secret

AFTER many months' deliberation an American court has decided that a reporter dues not have to reveal the source of his information—unless there is a compelling information-legal reason.

The verdict, handed down by a federal court in San Francisco, is being hailed by the American press as a landmark

The court, in its words, said: "The very concept of a free press requires that the news media be accorded a measure of autonomy: that they should be free to pursue their own investigation to their own ends without fear of governmental interference, and that they should be able to protect their investigative processes."

In other words a reporter's notebook is now sacrosanct.

Is now sacrosance.

The court's decision was the result of an appeal by Earl Caldwell, a negro reporter employed by the New York Times in San Francisco, against an order that he should testify in an investigation into the Black Panther Party about whom he had written several articles.

It also should mean the quashing of a five-day fail sentence imposed on Mary Crawford, a woman reporter on the San Francisco Examiner, for refusing to give evidence in the murder trial of six youths accused of murdering a California police-

Miss Crawford, who is the San Francisco stringer for several Fleet Street papers, interviewed one of the prisoners in jail.

She said she refused to give evidence at the trial—for either the defence or the prosecution—because she felt it would damage her reputation for impartiality.

damage her reputation for impartiality.

In Massachusetts, meanwhile, the local broadcasters' association is sponsoring an appeal against the conviction of New Bedford TV newsman Paul Pappas, who was found guilty of contempt for refusing to tell a grand jury what he saw and heard while he was inside a Black Panther headquarters during one of last summer's racial disorders. disorders.

His case too is now likely to be dis-

Job Finder

SIGN OF THE (American) Times:
There are so many jobless in the
Boston area that the Boston Herald
Traveller is running free classified
adverts for the out-of-work. The
paper runs the adverts (maximum
ten lines) until the job-seeker finds
a position — no matter how long
it takes.

* Water buffalo

THOUGH his name, because he was an agency man, was not known to newspaper readers, most journalists have spent time in Vietnam knew admired Merton Perry.

He was especially liked for his good humour and his courage. For six years he covered the war in Vietnam, first for UPI, then for fime and Newsweek maga-

zines.

A great hulk of a man—over 6ft. tall and weighing nearly 13 stone—he never permitted his girth to interfere with his job. He ploughed through the paddy fields with the youngest and slimmest of his companions. Even when Vietnamese soldiers laughed and said: "There goes soldiers laughed and said: "There goes the water buffalo."

In 1963 he and Charles Mohr, who is now with the NY Times, resigned from Time magazine in protest over an article criticising the press coverage in Vietnam. Last week, far from the battlefield, he died of a heart attack in a hospital in his home town in Wisconsin. He was 41.

* New Tooks

TOOTS Shor's, favourite New York hangout for many sports writers and columnists, has like most similar establishments been feeling the cold wind of the American recession.

Now Toots hopes it has found the answer. Part of the premises is being converted to a private club — with billiards tables, steam room and gymnasium.

Co-chairmen of the new club, which plans to charge an entrance fee of 1,000 dollars (£416) and annual dues of 300 dollars (£125) will be Bob Hope and Frank Sinatra

Among newsmen who will vet applica-tions for membership will be columnist Bob Considine, former US Information Agency chief John Doly and publisher William Randolph Hearst Jur.

In the mean time I assure you of my fullest cooperation at all times,

Yours Liathfully,

The Porch End tor

New 1014

U. S. Arthur

U. S. Arthur

The Porch End to the Control of the Con

large measure," he said, "the [proposed] new bud-

Oswald detailed for a joint meeting of the Legislature's fiscal committees the extent to which Gov. Reckefeller and the budget division had slashed the programs put forth by his department. The governor asked for \$101,041,000 for prisons for the fiscal year beginning next month, an increase of \$9,351,000. But Osweld said most of the money would be eaten up by

inflation. The department had requested \$22,000,000 more that was rejected by the governer's cifice. Cawald said most of the additional accurity he requested had been approved. But he said Reckesciler had rejected nearly all innovations or improvements in education, medical care, psychiatric cervices and counsoling for prisoners.

"We are able to get custodial money [for more prison guards] more readily than for programs," he said. Of

the 620 new positions authorized in the proposed budget, he said, only 36 were for rehabilitative programs. The department already has more than 200 vacancies due to the budget freeze ordered for all state agencies last year.

Despite the financial restrictions, Oswald said ha hoped to establish a "multi-purpose parole facility" in New York City. That facility, he said, would have existing parole officers and would provide space for short-term incarceration of parels violators from the metropolitan area. He said the facility could allow the department to avoid conding as many as 800 paroless a year back to prison, resulting in considerable savings.

Surrounded by Steel

This is not a game. This is war, as two GIs carry coils of barbod wire down a slope to fortify the perimeter of Firebaso Maude in South Vietnam. Elsewhere in the war vesterday, American forces battled small Communist units near Saigon and a U.S. fighter-bomber made the 67th raid into Morih Vietnam this year, attacking a radar site 40 miles from the demilitarized zone.

Daily Mirror Folds-Again

Combined News Services

New York's newest newspaper, The New York Daily Mirror. ceased publication last night after an existence of less than 14 months.

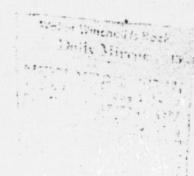
"We regret having to do this at this time," the publishers of the tabloid said in a statement. "New York requires and desperately needs another newspaper. But there were no alternatives. We were behind and we had other problems which prevented us from continuing publication."

Monaging Editor Cilbert Certer caid the folding of the newspaper was caused by "printing and distribution problems." The newspaper was launched Jan. 4, 1971 with many of the columnists of the old Hearst owned Daily Mirror which clessed in 1963 after 20 years of publication. Carter said his paper had a circulation of about 50,000. "We thought we had one of the best metropoliten daily newspapers and without the problem of distribution we could have made it," Carter said. The paper employed 42 persons, including 11 editorial workers.

Earlier this year, the tableid brought cost against three news distributing Brins-Carfunkel, American and Union News-charging that they had barred the Mirror from their newsstands.

The paper, which was published in Long Island City, was started by a former columnist for the defunct Brooklyn Eagle, Robert Farrell. The initial financing came from a \$300,000 public stock issue over the counter.

The late Walter Winchell came out of felirement to write a three-times-t-week column for the new paper which featured that feet in its first issue Jan. 4, 1971. Winchell died 11 days ago.



UPI Photo First issue

Bill to Assure the Student on Drugs

By Joe Demma Newsday Albany Bureau

Albany - Sen, Voon E. Giuffreda (R-Centereach) introduced a bill yesterday to prohibit a teacher from disclusing convergations with students about drug use.

problem, it's the tracher. But if a kid is afraid the teacher will go to the police, he's not going to confide in anyone."

A spokerman for the school boards association said that the bill followed from a resolution passed

anyone, and if anyone can help a student with a drug the subject but that she his personally in favor of the preposal.

Also yesterday, Assemblyman Arthur J. Kremer. (D-Long Beach) introduced a bill to margo the State. Atomic and Space Development Authority into the State Power Authority, Kremer said that the atomic

D: 0/14/63

York, New York, by and between THE HEARST CORPORATION, a Delaward corporation (hereinafter referred to as "Hearst"), and MINS SYNDICATE CO. INC., a New York corporation (hereinafter referred to as "News").

WITNESSETH:

WHEREAS Hearst is the owner and publisher of a morning tabloid rewspaper circulated daily and Sunday in the City of New York and elsewhere, published under the name of "New York Mirror" and also known as "Daily Mirror" and "Sunday Mirror" (said newspaper being hereinafter referred to as "Mirror"); and

WHEREAS News is the owner and publisher of a morning tabloid newspaper circulated daily and Sunday in the City of New York and elsewhere, known as "Daily News" and "Sunday News"; and

WHEREAS, on account of the substantial losses incurred, in the Mirror's operation over the past several years and its ever increasing operating costs, Hearst has decided to suspend publication of the Mirror and to offer certain of its assets to the News on the basis of the terms and conditions hereinafter set forth, and News is willing to acquire said assets;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties agree as follows:

1. Sale of Assets. Hearst will sell, transfer, convey and assign to News, and News will purchase, the following described

property and assets:

- (a) The name, title, good will, trademark and trademark registration of the Mirror, together with its right, title and interest in and to all names (including all pen names, names of writers and other names not those of a living person), titles, logotypes and slogans used exclusively in connection with the Mirror, including the right to use the whole or any part of the foregoing, and all rights and privileges of whatsoever kind or description belonging or incidental theretal
- (b) The circulation lists and data generally described in Exhibit A hereto:
- (c) Hearst's right, title and interest in and to the feature materials listed in Exhibit B hereto, but subject to the provisions of paragraph 4 hereof;
- (d) All copyrights and rights of literary property (excluding those relating to feature materials) held by Hearst solely as a result of the publication of material in the Mirror, together with a general exclusive license under each and all of said copyrights;
- (e) The library or "morgue" of the Mirror, including
 (i) all files of clippings, photos (including negatives)
 and related publication material, together with the file
 cabinets in which stored, and (ii) all bound files and file
 copies of the Mirror;

- 5 -

- (f) All of the Mirror's propaid subscription contracts and lists as provided for in paragraph 3 hereof; and
- (g) Such rights as Hearst may have in the Mirror promotion programs and activities and circulation contests, excluding the National Sports, Vacation & Travel Show and
 the Mirror Welfare Fund Dinner now scheduled for October 27,
 1963.

personal property, Hearst will effectuate such sale by executing and delivering to News a bill of sale, containing a warranty of title, giving full and complete title thereto, free and clear of all liens and encumbrances. To the extent that such assets consist of intangible property Hearst will effectuate such sale by executing and delivering to News an instrument or instruments of assignment transferring all of its right, title and interest thereto, free and clear of all liens and encumbrances. To the extent that the consent or consents of third parties may be required to render such assignment fully effective; Hearst will use its best efforts to secure such consent or consents.

2. <u>Consideration</u>. The consideration is payable by News to Hearst on the Closing

Date.

3. Subscription Contracts and Lists. Immediately following the Effective Date, Hearst will make available to News information concerning, and thereafter will assign, transfer and

of the Mirror with its readers. Hearst will deliver to News all subscription contracts, and subscription lists relating to such subscription contracts, and will remit to News the amount of all prepaid subscriptions received by it but not earned prior to the Effective Date; News will assume and pay, to an aggregate amount not exceeding the amount so remitted, any refunds of prepaid subscriptions which may be required to be made.

- feature materials which Hearst agrees to make available to News insofar as it has or can obtain the right to do so. Within ten (10) days immediately following the Effective Date, Hearst will assign, transfer, and deliver to News, and News will assume, such of those contracts relating to feature materials set forth in Exhibit B as to which News has elected in writing to accept an assignment.
- 5. Warranties by Hearst. Hearst warrants and represents that:
 - (a) It is a corporation in good standing existing under the laws of the State of Delaware.
 - (b) The consummation of the transaction herein provided for will not conflict with, or result in a default
 under or a violation of, any charter provision or any
 agreement or instrument to which Hearst is or on the Effective Date may be a party or by which it is or on the Effec-

Hearst have been duly and validly authorized by all necessary corporate action on the part of Hearst.

- . 6. Warranties by News. News represents and warrants
 - (a) It is a corporation organized and existing in good standing under the laws of the State of New York.
 - (b) The consummation of the transaction herein provided for will not conflict with, or result in a default under or a violation of, any charter provision or any agreer t or instrument to which News is or on the Effective Date may be a party or by which it is or on the Effective Date may be bound.
 - (c) The execution and delivery of this Agreement by
 News have been duly and validly authorized by all necessary
 corporate action on the part of News.
 - 7. Indemnification. Hearst agrees to indemnify and save harmless News from all liability, loss, cost, damage and expense which News may sustain in defending, compromising, settling or paying any tax, debt, claim, lien, suit, obligation, commitment or other liability, except such as have been undertaken by News under paragraph 3 and as shall be undertaken by News under paragraph 4 hereof, which may be asserted against or imposed upon News and which accrued up to or arose out of events which occurred prior to the Effective Date with respect to the assets and rights transferred by Hearst to News hereunder, or which arose out of the

ownership, publication and circulation of the Mirror prior to the Effective Date, provided News promptly notifies Hearst thereof and delivers to Hearst a copy of any demand or process served upon News. Hearst may select counsel to represent Hows with respect to any such action, claim or liability.

News agrees to indemnify and save harmless Hearst from all liability, loss, cost, damage and expense which Hearst may sustain in defending, compromising, settling or paying any tax, debt, claim, lien, suit, obligation, commitment or other liability which may be asserted against or imposed upon Hearst by reason of any action taken by News subsequent to the Effective Data with respect to the assets and rights acquired hereunder by News. News may select counsel to represent Hearst with respect to any such action, claim or liability.

- 8. Covenant Not to Compete. Hearst covenants and agrees that neither it nor any of its related corporations will, directly or indirectly, publish or hold an ownership interest in (a) any morning daily tabloid newspaper during the ten-year period commencing with the Effective Date, and (b) any Sunday tabloid newspaper during the one-year period commencing with the Effective Date, if such newspaper is published in the New York City retail trading area, as now defined by the Audit Bureau of Circulations.
- 9. No Assumption of Liabilities. It is understood and agreed that except as otherwise herein specifically set forth,

.. 7 ...

News assumes none of the liabilities or obligations of Harre.

It is further agreed that the respective contracts and other liabilities of Hearst covering or relating to employment, personnel, services, salaries, bonuses, accrued vacations, pensions, tommissions, termination notices and other compensation payments for services accrued up to the Effective Date will be the sole responsibility of Hearst.

The Closing and Instruments to be Delivered Thereat:

"Iffective Date. The payment of the consideration as aforesaid and the delivery of the documents evidencing and effecting the sales and transfers herein agreed to be made will constitute the "Closing", the date upon which such payment and delivery will take place will be the "Closing Date", and the time at which this Agreement and the transactions contemplated herein will take effect will be the "Effective Date", as such terms are respectively used in this Agreement.

The Closing will take place at 4:00 P.M. on October

15, 1963, at the offices of McCauley, Henry & Brennan, 959 Eighth
Avenue, New York 19, New York. The Effective Date of this Agreement will be 4:00 P.M. on October 15, 1963, provided, however,
that for the purposes of this Agreement, all editions of the
Mirror for October 16, 1963, shall be deemed to have been published and distributed by Hearst prior to the Effective Date.

At the Closing, Hearst will deliver to Messrs. Townley, Updike, Carter & Rodgers, counsel for News, instruments in form

tisfactory to Messrs. Townley, Updike, Carter & Acagers to be ld by them in escrow until the Effective Date and thereafter be delivered by them to News, as follows:

- (a) Bill of sale, dated as of the Rifective Date, as aforesaid;
- (b) Instrument or instruments of assignment, dated as of the Effective Date, as aforesaid.

At the Closing, News will deliver to Messrs. McCauley, enry & Brennan, counsel for Hearst, to be held by them in escrewatil the Effective Date and thereafter to be delivered by them be Hearst, the following:

- (c) A check payable to Hearst, in New York Clearing House Funds, for the sum of
- (d) An Instrument of assumption, in form satisfactory to Messrs. McCauley, Henry & Brannan, dated as of the Effective Date, effectively assuming those liabilities of Hearst expressly assumed hereunder by Mews.
- 11. Conditions Precedent. This Agreement will not take effect and the transactions contemplated herein will not become operative unless and until the following conditions are satisfied:
- (a) Hearst will have received from Messrs. Townley, Updike, Carter & Rodgers, their opinion, dated as of the Effective Date, to the effect that (i) this Agreement is a valid and binding obligation of News enforceable in

9 -

constitute a default under or a violation of any charter provision or agreement or instrument of which such counsel (having made inquiry with respect thereto) have knowledge, to which News is a party or by which it is bound, and (ii) all requisite corporate action by News has been taken to authorize and empower the consummation of this Agreement.

- (b) News will have received from Messrs. McCauley,
 Henry & Brennan, their opinion, dated as of the Effective
 Date, to the effect that (i) this Agreement is a valid and
 binding obligation of Hearst enforceable in accordance with
 its terms and will not conflict with or constitute a default
 under or a violation of any charter provision or agreement
 or instrument of which such counsel (having made inquiry
 with respect thereto) have knowledge, to which Hearst is
 a party or by which it is bound, and (ii) all requisite
 corporate action by Hearst has been taken to authorize and
 empower the consummation of this Agreement.
- will each execute and deliver or procure the execution and delivery of any and all instruments and do all other reasonable acts and things necessary to carry out the intent, purposes and provisions of this Agreement; that all demands or notices required to be given hereunder may be delivered in person or by registered mail, postage prepaid, with return receipt requested, to Hearst

(attention G. O. Markuson) at 959 Eighth Avenue, New York 19, Hew York, and to News (attention F. M. Flynn) at 220 East 42nd Street, New York 17, New York; and that this Agreement will be binding upon the parties hereto and their respective successors and assigns.

The parties hereto represent each to the other that it has taken no action nor made any commitment which would involve a broker's commission with respect to the transactions contemplated herein.

rights and liabilities of the parties hereto will survive the Closing and Effective Date hereunder and continue until discharged by performance.

This Agreement constitutes the entire understanding of the parties and cannot be waived, changed, discharged or terminated except by an agreement in writing signed by the party against whom the enforcement of any waiver, change, discharge or termination is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

(e. C.)		THE HEARST CORPORATION
Attest:	1.	The Haktor Colt Carre
Assistant Secretary	. *	By President
R55150Ello Deor Comp		NEWS SYNDICATE CO. INC:
Attest:		NEWS SINDICATE CO. INC.
1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	Seman -	ByPresident
Secretary		

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RETURNS

CIRCULATION HATERIAL

It is intended that Hearst will make immediately available to the News, after the Effective Date, all information relating to Mirror circulation, including:

All records on dealers, wholesalers and distributors;

Information on

Contracts

Allowances

Special arrangements (including Union News Company)

City and suburban wholesalers

Country wholesalers

Records of

Home delivery

Route sheets (direct delivery)

List of indirect delivery accounts

Honor box and vending machine locations and sales

EZMIBIT B

FEATURE MATERIALS

BELVADERE (Addex Associates, Inc.)

OUR AFERICA (Dr. Ruth Alexander)

STAMPS AND COINS COLUMN (Mrs. George Allard)

CALENDAR FEATURE (Allied Features Syndicate)

THE POWER OF FAITH (The Associated Press)

BOOK OF THE WEEK (Bell-McClure Syndicate)

CRYPT-A-CROSSWARD PUZZLE (Bell-McClure Syndicate)

EDGAR ANSEL MOURER (Bell-McClure Syndicate)

EMILY POST (Bell-McClure Syndicate)

H.I. PHILLIPS COLUMN (Bell-McClure Syndicate)

LIFE'S LIKE THAT (Bell-McClure Syndicate)

LOUIE (Bell-McClure Syndicate)

MARRIAGE, CHILDREN AND YOU (Bell-McClure Syndicate)

THERE OUGHTA BE A LAW (Bell-McClure Syndicate)

HARRY TRUMAN ARTICLES (Bell-McClure Syndicate)

A LOVELIER YOU (Chicago Sun-Times Syndicate)

SEAMS TO ME (Chicago Sun-Times Syndicate)

HEALTH FOR TODAY (Columbia Features, Inc.)

FASHION FEATURE BY OLEG CASSINI (Columbia Features, Inc.)

APARTMENT 3G (Field Enterprises Inc.)

BROTHER JUNIPER (Field Enterprises Inc.)

KERRY DRAKE (Field Enterprises Inc.)

REX MORGAN (Field Enterprises Inc.)

AFE OUT (Field Enterprises Inc.)

CUR SOCIAL SECURITY (Harvey Gardner)

TEMPIN TIPS (General Features Corporation)

FODAY'S CHUCKLE (General Features Corporation)

T.V. TEE-HEES (General Features Corporation)

WEE WOMEN (General Features Corporation)

BELIEVE IT OR NOT BY RIPLEY (King Features Syndicate)

WASHINGTON COLUMN BY FULTON LEWIS, JR. (King Features Syndicate)

HELRY (King Features Syndicate)

WOLAN ALONE (Los Angeles Times Syndicate)

MOTOR SPORTS AND RELATED ACTIVITIES (Denise McCluggage)

CARROLL RIGHTER-HOROSCOPE COLUMN (McNaught Syndicate)

DAN FLAGG (McNaught Syndicate)

THREE MINUTES A DAY (McNaught Syndicate).

MICKEY FIRM (McMaught Syndicate)

JOE PALOOKA (McNaught Syndicate)

OUR BOARDING HOUSE: OUT OUR WAY: PRISCILLA'S POPEBOOTS: BABE MIHORACE: (all Sunday Comics) PREDATE PUZZLE PAGE (black and FRECKLES: TOM TRICK (NEA Service, Inc.)

THE BETTER HALF (Register & Tribune Syndicate)

LIVING SHOULD BE FUM (Transamerican Features)

BOWIE RACE COURSE CHARTS (Triangle Publications, Inc.)

BY GEORGE (United Features Syndicate)

EMAY LOU (United Features Syndicate)

HEALTH CAPSULES (United Features Syndicate)

· LI'L ABNER (United Features Syndicate)

Plaintiff Summary Exhibits

the board of The New York News, died at New York 1.27 years president, publisher and Hospital yesterday after a short illness. He was 71. finally chairman of

Flynn was a vicency determine us a recommend was championing the crusader for a strong different and the newspaper which he regarded as "the value of all the people."

of a heart attack Oct. 26 while visiting friends in Elkton, Md.,

Flynn, who suff

front the mechanical to the edithe profession which he To his friends and fellow maintained a lifelong leve affair paper with which he'd been assufor more than four decand with the particular newsworkers, he was a man who had law and engineering OVER torisl. But he remained active in The News, chief executive officer of WPIX television, and a director and executive serve as chairman of retired as publisher The News in January of his death. He conti committee member of

to

for the crazy, cockayed, wonder soq's death in 1846 and kept The for affinulating, nerve-wracking, News on the course that Pat completely unpredictable occupated the same time, Plynn had the abuned it, he told a group to a the same time, Plynn had nay a business, bankers to a the same time, Plynn had a professors back in 1854.

If you don't yearn for it be the recopolitan newspapers died. Start, and if you don't love it after you're in it, you should ket out. And if you do get out, you'll always want to get back," Church, Park Ave. at 11st St. of at 4 p.m. Tuesday, The Ray, David as S. Hoag, the rector of Church Pelham, ewill, officialer, assisted by the Rev. Dr. Terence - Memorial services will be hold J. Finlay, the rector of St. Bar-

In lieu of flowers contributions one newspaper above all Journalism Award

thoiomew's.

ter, Mrs. Margaret (Peggy). Moody of New Canaan Conn., and five grandthildren: Mere-Flynn, 22; Kirk Flynn, 21, and Flynn, 22; Kirk Flynn, 21, and an is surgived by his daugh. Dwight Moody, 15; Rick Moody, 13. Redeemer, Pelham, or the Heart Fund. Buris will be

To the world, Francis Marion he by (Jack) Flynn was a gifted execu- News,

every

had mastered

turn, he disclosed the secret of successful journalism, which he said had come from Wilbur F. Ir Storey, in 1981, editor of the old Chicagy Things;

Medill Patterson, after Patterbetson had charted. founder, the late Cept. Joseph soq's death in 1946 and kept The With this philosophy, Jack News "Print the news and raise hell. Flynn succeeded

parent Tribune Company, H

also was a trusteers

McCormick-Patterson Tr.

to authit to a crunch era for

News sold more than two mildirection, Great Prosperity Under

virtually every year and the age eets of the newspaper and light And he expressed his lave for tained the largest daily and Sundvertising lineage increased million on Sunday and thus main.

the best rewritemen, the heat sunstant Fluri's regime.

editors, the best ni arwing staff in the feeling Fluri's regime.

and the best all arwing staff in the feeling Fluri's regime.

All departments, the paid of the stage of the stage of Chicago Chancellor Robert M. raid the best all arwing and the press.

"I can't understand why any apper about a not be profits.

"I can't understand why any apper of more serviced to "Criticize the press."

"I can't understand why any apper of bring about such he declared. "Disagree with the body, reads any other public. To bring about such he declared. "Disagree with the bress." New Jack Flynn received the at the Fill of Rights shrine at nowal Distinguished S.rvice Mount Vernon, N.Y., he attacked and of the University, of Mis- the proposal by then University, of Mis- the proposal by then University.

. . . yes. Do any and all of these

quasi-governmental bodies. critics inside or outside And in his own job, he the editorial department ment, by commission, o. or for New York, or News, provided the "the right thing" for things which free men wish to do, but never, never take one step

(Continued on pay

F. M. (Jack) Flynn -- dies at t'e age of 71.

I'NTIME COID, JA226

D.J. FRANKEL'S MEMORANDUM DECISION AND ORDER DATED
JUNE 23rd,1975 (re: recusance)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUN 24 1975
S. D. OF N. T.

DAILY MIRROR INC.,

Plaintiff,

-against-

NEW YORK NEWS INC., et al.,

Defendants.

71 Civ. 1211

MEMORANDUM

FRANKEL, D. J.

on June 9, 1975, the court ordered summary judgment dismissing the complaint herein.

On June 19, 1975, the plaintiff filed an application seeking an order by the undersigned recusing himself.

On June 20, 1975, the court received a telegram from the plaintiff said to be in further support of that application. I pass the question whether the application is timely. Having studied it, I find it insufficient in law. It is denied. So ordered.

Dated, New York, New York

June 23, 1975

Marin E. Frankel

MICROFILM

JUN 3 4 1975

PAGE EXCERPTS FROM CONTRACT OF ACQUISITION BY DEFT "NEWS" FROM HEARST DATED OCTOBER 15th, 1963

- (f) All of the Mirror's prepaid subscription contrast and lists as provided for in paragraph 3 heroof; and
- (5) Such rights as Hearst may have in the Marror promotion programs and activities and circulation contests, excluding the National Sports, Vacation & Travel Show and the Mirror Welfare Fund Dinner now scheduled for October 27, 1963.

personal property, Hearst will affective such sale by executing and delivering to News a bill of sale, containing a warranty of title, giving full and complete title thereto, free and clear of all liens and encumbrances. To the extent that such assets consist of intangible property, Hearst will effectuate such sale by executing and delivering to News an instrument or instruments of assignment transferring all of its right, title and interest thereto, free and clear of all liens and encumbrances. To the extent that the consent or consents of third parties may be required to render such assignment fully effective, Hearst will use its best efforts to secure such consent or consents.

J 2. Consideration. The consideration is payable by News to Hearst on the Closing Date.

3. <u>Subscription Contracts and Lists</u>. <u>Immediately</u> following the Effective Date, Hearst will make available to Newsinformation concerning, and thereafter will assign, transfer and

ownership, publication and circulation of the Mirror prior to the Effective Date, provided News promptly notifies Hearst thereof and delivers to Hearst a copy of any demand or process served upon News. Hearst may select counsel to represent News with respect to any such action, claim or liability.

News agrees to indemnify and save harmless Hearet from all liability, loss, cost, damage and expense which Hearst may sustain in defending, compromising, settling or paying any tax, debt, claim, lien, suit, obligation, commitment or other liability which may be asserted against or imposed upon Hearst by reason of any action taken by News subsequent to the Effective Date with respect to the assets and rights acquired hereunder by News. News may select counsel to represent Hearst with respect to any such action, claim or liability.

- agrees that neither it nor any of its related corporations will, directly or indirectly, publish or hold an ownership interest in (a) any morning daily tabloid newspaper during the ten-year period commencing with the Effective Date, and (b) any Sunday tabloid newspaper during the one-year period commencing with the Effective Date, if such newspaper is published in the New York City retail trading area, as now defined by the Audit Bureau of Circulations.
- 9. No Assumption of Liabilities. It is understood and agreed that except as otherwise herein specifically set forth,

JA229

(attention G. O. Markuson) at 959 Eighth Avenue, New York 19, How York, and to News (attention F. M. Flynn) at 220 East 42nd Street, New York 17, New York; and that this Agreement will be binding upon the parties hereto and their respective successors and assigns.

The parties hereto represent each to the other that it has taken no action nor made any commitment which would involve a broker's commission with respect to the transactions contemplated herein.

Except to the extent of discharge by performance, the rights and liabilities of the parties hereto will survive the Closing and Effective Date hereunder and continue until discharged by performance.

This Agreement constitutes the entire understanding of the parties and cannot be waived, changed, discharged or terminated except by an agreement in writing signed by the party against whom the enforcement of any waiver, change, discharge or termination is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

as of the day and year	first above will
	THE HEARST CORPORATION
Attest:	ByPresident
Assistant Secretary	
Attest:	NEWS SYNDICATE CO. INC.
and the second of the second o	By_President
Secretary	

EXCERPTS OF INTERROGATORIES ANSWERS BY FRANCIS FLYNN, CHAIRMAN OF BOARD OF DEFT, "NEWS", DATED MAY 3, 1974 JA230

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DAILY MIRROR, INC.,

71 Civ. 1211

Plaintiff.

: ANSWERS TO INTERROGA-

TORIES 1, 2, 3, 5

- against -

: (PARTIAL), 5 (PARTIAL),

NEW YORK NEWS, INC., HARRY GARFINKLE, : 14 (PARTIAL), 17, 18, 19, UNION NEWS COMPANY, INC., AMERICAN

7 (PARTIAL), 13 (PARTIAL), 21, 22 (PARTIAL), 23 and

NEWS COMPANY, INC. and ANCORP, INC., : 24 (PARTIAL) of INTER-ROGATORIES OF PLAINTIFF

Defendants. : SERVED APRIL 3, 1974

Defendant New York News Inc. by its Chairman of the Board, Francis M. Flynn answers interrogatories 1, 2, 3, 5 (partial), 6 (partial), 7 (partial), 13 (partial), 14 (partial), 17, 18, 19, 21, 22 (partial), 23 and 24 (partial) of plaintiff's interrogatories served April , 1974, as follows:

INTERROGATORY 1: As to defendants status as a corporation, state:

- (a) the state in which it was incorporated,
- (b) the place where incorporated,
- (c) the date when incorporated,
- (d) the amount of capitalization at time of incorporation.

ANSWER:

- (a) State of New York,
- (b) same as answer to 1(a)
- (c) May 21, 1919
- (d) \$500,000

INTERROGATORY 5: As to the acquisition of Gaynor News Company:

- (h) what type of business was Gaynor News,
- (i) what territory did it make distribution of magazines and or newspapers,
- (j) did Gaynor News distribute the New York News Inc. "News" daily and Sunday.

ANSWER:

- (a) with respect to Interrogatory 5(h), see paragraph (xx) of the answer to Interrogatory 3
- (b) with respect to Interrogatory 5(i), see (a)
- (c) with respect to Interrogatory 5(j), yes, during the period from January 1971 to March 1972.

INTERROGATORY 6: As to any other companies the "News" acquired or controlled that distributed newspapers daily and Sunday,

- (a) names of such companies or organizations,
- (b) names of officers of such companies,
- (c) dates of such acquisitions or associations.

ANSWER: During the period from January 1971 to date defendant, the News, has not acquired nor has it controlled (except for Gaynor News Company, and its subsidiaries) any corporations or other business entities engaged in the business of distributing newspapers daily and Sunday.

INTERROGATORY 7: As to companies that distribute the "News" daily and Sunday,

(a) name all companies so engaged,

- (d) I do not know who, if anyone, approved the letter referred to in this Interrogatory,
- (e) no reply was received by the News,
- (f) I am advised that no legal proceedings were instituted by Townly, Updike, Carter & Rodgers,
- (i) no.

INTERROGATORY 14: State what "News" policy steps were taken, one by one, by you or anyone at the "News", officers directors or owners or employees from the date of the purchase of the "Mirror" by the "News" from the years 1963-1964 through 1971 and after the publication of the plaintiff's publication in 1970,

- (b) what changes if any were made at the "News" due to the publication of the "Daily Mirror" the plaintiff herein?
- (e) did you consider that the Daily Mirror in its format and size and photographs was a competitor and a threat to the circulation of the "News" and its advertising contracts?
- (f) in your capacity as an executive and having been with the "News" for a long period of time, would you state that it, the "Daily Mirror", was a tabloid in the morning field just as was the "News"?

ANSWER:

- (b) none.
- (e) to the extent that newspapers are distributed

and sold within the same areas they are all competitors with one another. I never considered the Daily Mirror, in particular, as as competitor which was a threat to the circulation of the News and its advertising contracts,

(f) the News is a tabloid newspaper and, the Daily Mirror was a tabloid newspaper.

However, I would not state that "the Daily Mirror was a tabloid in the morning field just as was the News."

INTERROGATORY 17: Did you or anyone else at the "News" order any investigation to be conducted as to the activities of the Daily Mirror?

- (a) its circulation, its distribution, its wholesalers?
- (b) its financial structure?
- (c) where it was printed?
- (d) its press run?
- (e) its staff, editors, sports department?

ANSWER: I never ordered any such investigations and I am not aware of any such investigations being ordered by any other officers or employees of the News.

INTERROGATORY 21: Are you familiar with the contents of the Complaint in this action?

ANSWER: I am not familiar with the contents of the complaint of this action but I had been apprised of the nature of the claims asserted by plaintiff.

INTERROGATORY 22: Were you consulted by the law firm representing the "News" before they sent the letters of March 16th 1971 and August 31, 1965.

(a) if not do you know who at the "News" was consulted?

ANSWER: I was not consulted with respect to the March 16, 1971 letter referred to in Interrogatory 22 and I do not know who, if anyone, at the News was consulted.

INTERROGATORY 23: Did you confer in relations to the Daily Mirror starting publication in 1970 or prior to that time with any office managers, or principals of the American News Company Inc., Union News Company Inc. or Ancorp Inc. Gaynor News, Newark News Suppliers, Albany News Company, Greater Boston News Company.

- (a) were there any letters written on this subject?
- (b) were there any phone calls made on this subject?
- (c) were there any meetings held on this matter?
- (d) If so, will you give us the documents, dates and names of any such individuals with whom 'you had such contact?

ANSWER: I did not engage in any conferences of the nature described in Interrogatory 23.

INTERROGATORY 24: Do you know Henry Garfinkle;
William McCoullough, William Levine, Winny Gaymor, Archie Gordon.
Sol Giglio? What oxal, written conversations between you,
1970-19732

ANSWER: I know Fensy Garfinkle and Jimmy Gaynor.

I do not know the other persons named in Interrogatory 24.

SCHEDULE A

- 1. The New York News Inc. distributes the News daily and Sunday in the five boroughs of New York City.
- 2. The following are the names of the companies that distribute the News daily and Sunday in the greater metropolitan New York area:
 - a) Union County Newsdealers Supply Co.
 - b) New Brunswick Newsdealer Supply Co.
 - c) Jersey Coast News Co.
 - d) Brauninger News Co.
 - e) Newark Newsdealers Supply Co.
 - f) Passaic Co. News Co.
 - g) Peekskill NY
 - h) Rockland News Agency, Inc.
 - i) Consolidated District Inc.
 - j) Gaynor News Company, Inc.
 - k) Standard News Company, Inc.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT

DAILY MIRROR INC.

Plaintiff

- against -

71 CIV 1211

(ME.F. AFFIDAVIT

MIN YORK NEWS, INC., MARRY (HENRY) CARFINILE, UNION NEWS OD., INC., A SERICAN NEWS CO., INC., and AMCORP, INC. .

Defendants

STATE OF HEW YORK) COLETTY OF NEW YORK)

ROY M. COIN being duly sworn deposes and says:

- 1. I submit this affidavit in opposition to the various rotions of Plaintiff, and to that of Robert W. Farrell, Esq., sworn to, May 19, 1975.
- 2. I am a senior member of Saxe, Bacon, Bolan & Manley, P. C. Our role as counsel for Ancorp National Services, Inc. in this action, stems exclusively from the fact that our firm was designated Special Counsel for the company in charge of litigation, by order of Hon. Edward J. Ryan, Bankruptcy Judge for this Court. Jeffrey Shuman, Esq., referred to by plaintiff is inside Corporate Counsel for Ancorp. With the company's emergence from reorganization proceedings on May 13, 1975, our firm became its General Counsel.
- 3. This entire ninety million dollar action has been characterized by laches, frivolous requests, total neglect, and almost enharrassing ineptness on the part of plaintiff for four years, since it brought the action. These tactics have caused expense and time-wasting to defendant Ancorp, its

management, and shareholders.

- 4. These motions, supported by Mr. Farrell's affidavit, are a case in point. Mr. Farrell does the following:
 - A. Concedes the inexcusable delays and inaction after
 the complaint was filed four years ago but
 advances the somewhat novel theory that the burden
 thereby shifted to defendants to cure plaintiff's
 neglect, "In the meantime, the defendants made no
 point of pressing the matter on, and seemed entirely
 content to leave the case at rest with the plaintiff."
 - B. Alleges that when plaintiff finally woke up, and decided to proceed with "vigor", it was then "disrupted" by the judge assignment process in this Court "The Court is asked respectfully to consider that much of our efforts, once we undertook with vigor to prosecute, were disrupted naturally by the fact that, three times the Court assigned judges to take over this action.".
 - C. Demands the court-appointed and then General Counsel of the company be disqualified because I, a member of the firm had conversations with plaintiff, and am therefore a potential "long-standing key witness" thus rendering the firm disqualified "It is important, to avoid inevitable disruption of any trial, to be had herein, of the central issues, because Roy Cohn is a long-standing 'key' witness

for the plaintiff, and who was also consulted at great length as a prospective attorney to represent the plaintiff in this action. Passing the point that this issue has already been determined adversely to plaintiff, it is interesting to find in the first page of Mr. Farrell's affidavit a statement that he himself is acting as plaintiff's attorney despite the fact that he himself is "an important witness in its behalf." As a long-standing key-witness, I have no recollection of having been examined by plaintiff during the past four years since the action was instituted, and state now, as I would have then, that I never represented plaintiff and never received any confidential information from plaintiff. Plaintiff spoke to me as one who had represented Ancorp and predecessors from time to time about its problem, which, unfortunately, resulted from lack of leadership receptivity or recognition of its product.

5. The attempt to examine Myron Carfinkle at this point, and make an issue concerning him, is frivolous. Plaintiff well knows that during the acts complained of, Myron Carfinkle was not an officer, director, employee or in any way connected with Ancorp or its predecessors. His first connection with Ancorp came two years after the suit was filed, when old management was replaced due to the Chapter XI, and Myron became the new Chief Executive

Officer. Indeed, the ferror Chief Executive Officer, Henry Garfinkle, unsuccessfully sued the new ranagement headed by Myron Garfinkle (Henry Carfinkle v. Ancorp, et al., Supreme Court, N. Y. County, 1974).

- 6. The balance of Mr. Farrell's affidavit, contains such unhelpful statements as calling Mr. Levine of Ancorp a "questionable character"

 (Farrell affidavit p. 5), and criticizing values witness' answers. I have
 not attended the depositions, but have been advised by counsel who have, that
 the performance of plaintiff's counsel was more appropriate to a comedy act
 than a legal proceeding.
- 7. It is respectfully submitted that the instant motions should be denied, and that this Court entertain motions for summary judgment and dismissal of this four year old misadventure.

Sworn to before me this day of , 1975.

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11801

ROBERT W. FARRELL

NEW YORK CITY OFFICE 67 PARK AVE. N. Y. C. 10016

June 6th, 1975

Hon.Marvin E.Frankel United States District Court New York, N.Y. 10007

71 CIV 1211

Dear Sir:

Re: Daily Mirror Inc.,/ New York News ,Inc.et al.

I am in receipt of the District Judge's unusual letter of June 2nd,1975 addressed to all parties, said letter being sent, after word had already arrived at Chambers that application for your Honor's withdrawal had been duly filed with your Court's clerk(mr. Becker) on Thursday, may 29th,1975 at about 3:20 PM.

Our application, while it is by affidavit provided for under Section 144 Title 28 USC, in requirement of instant withdrawal, is also based upon the self-operative, self-iniatiative provisions of Section 455, same title, as now amended, which leaves the litigant before him, most uncomfortable and lacking confidence and faith in fairness of the Judge, employing the qualification standards set down by the Supreme Court in Estes v Texas, emphasizing the appearance, rather than the reality of justice, as a test, for withdrawal.

The revised statute 455, makes not the sense of duty in the Judge to continue to sit, a basis for resistance to the litigant's claim, but the sense of discomfort in the litigant, as a basis for the Judge's more likely obligation to withdraw.

It seems to us, that the Judge's response by letter of June 2nd,1975 should better have waited the Judge's full receipt of the application of withdrawal and thus avoided the continuing appearances, which have brought on further discomfort. Your Honor's reference to the imminent possibility of "summary judgment" against the plaintiff, without any reference to our pending priority motion for EBT discoveries, as against the mere casual projection of a motion for summary judgment by defendant, accepted by your Honor, as a mere suggestion most casually, made at that time, a further demonstration, that can only be deemed, aggrieving judicial attitude, as it appears to us.

I am hastening to have this response to yours of June 2nd, delivered to your Chambers.

Robert W Farrell

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LETTER TO DEFT. NEW YORK NEWS INC, attorney GERAGHTY FROM D.J. MARVIN E.FRANKEL DATED JUNE 30th, 1975

UNITED STATES DISTRICT COURT UNITED STATES COURTHOUSE NEW YORK, N. Y. 10007

CHAMBERS OF E MARVIN E. FRANKEL

June 30, 1975

Mark D. Geraghty, Esq. Townley, Updike, Carter & Rodgers, Esqs. 220 East 42nd Street New York, N.Y. 10017

> Re: Daily Mirror, Inc. v. New York News, Inc., et al 71 Civ. 1211

Dear Mr. Geraghty:

This is in response to your letter of June 26, 1975.

The memorandum decision dated June 24, 1975, was meant to deny the application for recusal and to reaffirm the decision granting summary judgment. The case is meant to have been finally concluded for all purposes at this <u>nisi</u> prius level.

Very truly yours,

Marin E. Frankel

cc: All Counsel

Letter from D.J.Marvin E.Frankel to Deft. "News" counsel DATED JUNE 30,1975

JA242

UNITED STATES DISTRICT COURT UNITED STATES COURTHOUSE NEW YORK, N. Y. 10007

CHAMBERS OF

JUDGE MARVIN E. FRANKEL

Tune 30, 1975

Mark D. Geraghty, Esq. Townley, Updike, Carter & Rodgers, Esqs. 220 East 42nd Street New York, N.Y. 10017

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Very truly yours,

cc: All Counsel

AFFIDAVIT FROM ROY COHN'S LAW FIRM(Lang) in opposition to Plaintiff's Motion returnable July 3rd, 1975 already JA243 dated July 10th,1975 decided COURT STATES DISTRICT COURT DUT ERN DISTRICT OF NEW YORK "For Referral to Judge Marvin E. Frankel" ALLY MIRROR INC., 71 Civ. 1211 Plaintiff, - against -AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTIO: NEW YORK NEWS INC., HARRY GARFINKLE, UN'ON NEWS COMPANY INC., AMERICAN NEWS COMPANY AND ANCORP INC., Defendants, ----X STATE OF NEW YORK) SS.: JOHN F. LANG, being duly sworn, deposes and says: am a member of the firm of Saxe, Bacon, Bolan & Manley, P.C., attorneys for the defendant Ancorp Inc., in the within action. I make this affidavit in opposition to plaintiff's motion brought on by notice of motion on June 17, 1975. It is respectfully submitted that plaintiff's motion to vacate the order of this Court, granting defendants summary judgment is totally without foundation in fact or law, and fails to state any coherent grounds in support thereof. THEREFORE, it is respectfully requested that plaintiff's latest motion, on whatever grounds it is based, should be denied in every respect. John Fil Sworn to before me this 1000 day of July, 1975 SUSAN BELL NOTARY PUBLIC, STATE OF NEW YORK No. 31-4607703 New York County .

FECISION DATED JULY 3rd, 1975 (filed July 7th, 1975) of D.J. Marvin E. JA244
Frankel, denying motion to vacate.

SOUTHER DISTRICT COURT

S. DISTRICT COURS

DAILY MIRROR INC.,

Plaintiff.

-against-

NAW YORK NEWS INC., et al.,

Defendants.

71 Civ. 1211 MEMORANDUM AND ORDER

#42737

PRANKEL, D.J.

mid made returnable today seeks, "before a properly assigned Judge . . . or such other as may be assigned for the hearing hereof, . . . an Order vacating ab initio the . . . Decision-Hemorandum [dated June 9, 1975], and any Judgment entered thereon or to be entered thereon, as an extra-judicial act, a legal anomaly, a nullity in law, an abortive attempt of the Judge to effect a single, joint and concurrent disposition of two incompatible judicial processes, one in personal recusance of the deciding Judge, and the other in adjudication of the pending case, and as surprise product of undue haste and a denial of due process; and for such other and further velief, by way of reinstatement of a time schedule for the further

JA245

prosecution and defense of the within case, and otherwise as may be fitting in the premises."

The motion is denied.

It is so ordered.

Dated, New York, New York MARVIN E. FRANKEL

and shall be the state of the s

July 3, 1975

U.S.D.J.